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Inheritance and Insanity:  
Transatlantic Depictions of Property and Criminal Law in Nineteenth Century Scottish  
and American Fiction

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## Table of Contents

Signed Declaration.....	5
Abstract.....	7
Acknowledgments.....	11
Introduction: Inheritance, Insanity, and Legal Fiction.....	15
Chapter One: Transatlantic Law and Literature in Nineteenth Century Scottish and American Fiction.....	25
Chapter Two: “In Equity Rather than in Law”: Aristocracy, Meritocracy, and Inheritance in <i>Rob Roy</i> , <i>The Bride of Lammermoor</i> , and <i>The House of the Seven Gables</i> .....	61
Chapter Three: “Why <i>Will</i> You Say That I Am Mad?”: Insanity and Rationality in “The Tell-Tale Heart” and “Strange Letter of a Lunatic”.....	107
Chapter Four: “The Situation was Apart from Ordinary Laws”: Culpability and Insanity in the Urban Landscapes of Robert Louis Stevenson’s London and Frank Norris’s San Francisco.....	165
Conclusion.....	215
Works Cited.....	219



### Signed Declaration

In submission of this thesis for examination, I certify that:

- (a) I am the author of this thesis,
- (b) The work in this thesis is my own, and
- (c) The work in this thesis has not been submitted for any other degree or professional qualification.

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Brian Robert Wall

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Date



## Abstract

Participants in the critical enterprise of “Law and Literature” tend to center their arguments on the question of literature’s utility to the study and practice of law. I focus instead on the reciprocal corollary: how can an understanding of law influence a critical reading of literature? Taking cues from discussions in Renaissance studies of law and literature and drawing on my own legal training, I assert that transatlantic literary studies provides both a conceptual framework for positing a reciprocal relationship between law and literature and, in nineteenth century Scottish and American depictions of property and criminal law, a crucial test case for this exploration by uncovering new “legal fictions” within these texts.

I begin my first chapter by situating my work within recent critical work in Law and Literature. While most scholarship in the “law in literature” subcategory since James Boyd White’s influential 1973 text *The Legal Imagination* has focused on how (and if) literary studies can help current and future legal practitioners through what Maria Aristodemou calls “instrumental” and “humanistic” mechanisms, recent work, particularly by a dedicated group of interdisciplinary scholars in Renaissance studies, has focused on the law’s benefit to literary studies in this field. I explore the critical mechanisms employed by these scholars as well as by scholars in nineteenth century literary studies such as Ian Ward. I then turn to transatlantic literary studies, arguing that the approaches outlined by Susan Manning, Joselyn Almeida, and others provide a framework that can give nineteenth-century literary studies a similar framework to that proposed by Aristodemou: an “instrumental” method of giving greater precision to discussions of how historical institutions and hierarchies are depicted in nineteenth

century literature, and a “humanistic” method of extending beyond historicist approaches to see beyond the often artificial demarcations of literary period and genre by finding commonalities that transcend disciplinary and historical borders. I conclude this introduction by identifying the legal and literary parameters of my project in the legal-political tensions of late-eighteenth and early-nineteenth century Scotland and America.

My second chapter focuses on property law and the question of inheritance, reading Walter Scott’s *Rob Roy* and *The Bride of Lammermoor* alongside Nathaniel Hawthorne’s *The House of the Seven Gables* to demonstrate how the narratives play with two dueling theories of inheritance law – meritocratic and feudal – and how those dueling legal theories impact the events of the tales themselves. After outlining tensions between older but still prevalent ideas of feudal succession and newer but admittedly flawed in execution notions of meritocratic land transfer, I explore how Scott’s and Hawthorne’s narratives demonstrate the inability of their characters to reconcile these notions. Both *Rob Roy* and *The House of the Seven Gables* seem to demonstrate the triumph of deserving but legally alienated protagonists over their titled foes; both novels, however, end with the reconciliation of all parties through ostensibly love-based weddings that perform the legal function of uniting competing land claims, thus providing a suspiciously easy resolution to the legal conflict at the heart of both stories. While reconciliation makes the legal controversies at the heart of these stories ultimately irrelevant, the legal nihilism of *The Bride of Lammermoor* takes the opposite tactic, demonstrating both the individual shortcomings of the Ashton and Ravenswood families and the systemic failure of Scottish property law’s feudalism to achieve equitable outcomes.

I next turn to the question of insanity in Edgar Allan Poe's "The Tell-Tale Heart" and James Hogg's "Strange Letter of a Lunatic," arguing that both narratives complicate the legal definition of insanity by showing gaps between the legislative formulation and actual application to their fictional defendants. After developing the different viewpoints towards criminal culpability articulated by the American (but based on English law) and Scottish versions of the insanity defense, I turn first to Poe's "The Tell-Tale Heart." Poe's narrator, I argue, deliberately develops a narrative that takes him outside the protections of the insanity defense, insisting on his own culpability despite – or perhaps because of – the implications for his own punishment. Meanwhile, Hogg's narrative, both in its original draft form for *Blackwood's* and its published version in *Fraser's*, paints a different picture of a narrator who avoids criminal punishment but finds himself confined in asylum custody.

These two areas of inheritance and insanity collide in my exploration of Robert Louis Stevenson's *Strange Case of Dr Jekyll and Mr Hyde* and Frank Norris's *McTeague*, where I illustrate the relationship between the urban demographics and zoning laws of both the real and fictional versions of London and San Francisco and the title characters' mentally ill but probably not legally insane murderers. After demonstrating Stevenson's and Norris's link between psychology and the complex amalgamations of their fictional cityscapes, I demonstrate how these cityscapes also allow them to sidestep rather than embrace mental illness as an excuse for their murderous protagonists' crimes, indicting the institutions at the center of their texts as equally divided and flawed.



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As if she was not busy enough with her many responsibilities as Head of Department and general editor of the *New Edinburgh Edition of the Complete Works of Robert Louis Stevenson*, Professor Penny Fielding was kind enough to take me under her wing after Professor Manning's passing. I have benefited greatly from her kindness in fitting me into her crowded schedule as well as her insightful recommendations, perpetual optimism, and constant encouragement, and I could not have asked for a better mentor.

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Finally, I would like to thank my family: my parents, who taught me to read and got me hooked on Poe and Stevenson; my parents-in-law, sister, brothers- and sisters-in-law, nephews, and niece for their enthusiasm and support; my wife Katy, who excitedly

moved halfway around the world so I could chase my dream of earning a doctorate and has been a constant source of inspiration and encouragement; and our daughter Hallie, whose arrival I am looking forward to even more than the completion of my degree.



## Introduction:

### Inheritance, Insanity, and Legal Fiction

The phrase “legal fiction” has both literary and legal meaning. While a literary work about legal characters or issues may accurately be described as a legal fiction, the practical use and enforcement of many legal doctrines depends on the foundation of a fictional construct. As Jonathan Kertzer writes, “Extreme cases call for extreme measures, but measuring accurately may require imaginary solutions – posthumous torture, life plus ninety-nine years, death by installments – to real problems” (29). William Blackstone suggested that legal fictions were a necessity for lawyers and judges struggling to adapt antiquated legal precedent to contemporary circumstances: “We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless. The inferior apartments, now converted into rooms of convenience, are cheerful and commodious, though their approaches are winding and difficult” (268). As Henry Maine asserted in 1861, the use of legal fiction originated in Roman law as a pleading tactic, later evolving to become the doctrinal center of various legal maxims (30). While thinkers such as Jeremy Bentham<sup>1</sup>, who claimed that “above all the pestilential breath of Fiction poisons the sense of every instrument it comes near” (235), vehemently criticized the employment of fiction in legal

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<sup>1</sup> In an interesting examination of Bentham’s ideas, Marjorie Stone examines his attacks on the concept of legal fiction through Charles Dickens, arguing that even though Dickens “is often viewed as a confirmed anti-Benthamite” in his approach to social policy, “like many of his contemporaries, he was an enthusiastic and consistent supporter of Benthamism in the field where Bentham scored his greatest triumphs: the field of law” (126).

practice or judicial decision making, their use is nevertheless commonly accepted in jurisprudence.

One of the most famous legal fictions – the doctrine of the “reasonable person” – presents an interesting opportunity to examine how legal fictions function in both the legal and literary realms. Many legal scholars trace the modern incarnation of the reasonable person standard in common law to the English Court of Common Pleas’ 1837 decision in *Vaughan v. Menlove*,<sup>2</sup> although, as Randy Austin notes, “no one knows just exactly how the Reasonable Man first appeared in the law” (480), and Ronald Collins argues that readings of *Vaughan v. Menlove* have been misconstrued to force the reasonable person into a premature entrance, suggesting that *Vaughan* instead proposes the standard of “ordinary prudence” rather than the legal fiction that the reasonable man has become (312). The court’s decision in *Vaughan*, which held that a negligent farmer could not be excused from accidentally burning down his neighbor’s property due to poor hay stacking, indicated that a higher standard of intelligence was required than the defendant’s admittedly low level: “Instead, therefore, of saying that the liability for negligence should be co-extensive with the judgment of each individual, which would be as variable as the length of the foot of each individual, we ought rather to adhere to the rule which requires in all cases a regard to caution such as the *man of ordinary prudence* would observe” (475, emphasis added). While the reasonable person standard is widely used in tort, criminal, and contract law, the value of its application as a legal fiction has been debated. Oliver Wendell Holmes argued the necessity of a standard that exceeds that of an “average person,” indicating that, to minimize the danger of damage to property

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<sup>2</sup> 3 Bing NC 468, 132 ER 490 (CP) (1837).

rights due to avoidable negligence, the community must require each individual “to come up to their standard, and the courts which they establish decline to take his personal equation into account” (108). On the other hand, A.P. Herbert’s famously tongue-in-cheek paean to the virtues of the reasonable person epitomizes the recognition of the gap between the required legal standard and real human capacity:

Devoid, in short, of any human weakness, with not one single saving vice, *sans* prejudice, procrastination, ill-nature, avarice, and absence of mind, as careful for his own safety as he is for that of others, this excellent but odious creature stands like a monument in our Courts of Justice, vainly appealing to his fellow-citizens to order their lives after his own example (12).

Herbert’s depiction of the reasonable man as “excellent but odious” paragon without either weakness or “saving vice” highlights the fictional nature of his existence, or the lack thereof. While the reasonable man may be a convenient standard for measuring levels of negligence in a tort case, measuring real human behavior to a fictional ideal is potentially problematic.

Herman Melville’s “Bartleby the Scrivener” (1853) has been read in conjunction with the legal fiction of the reasonable man. While I do not intend to engage in a sustained analysis of Melville’s unfortunate clerk in this thesis, I do suggest that the way that “Bartleby” has been read by critics is an important example of the bilateral readings – i.e. legal understanding contributing to the understanding of literature as well as literature contributing to the understanding of law – that legal fictions such as those of the reasonable man can have in law and literature, and that I will argue in Chapter One is essential to my project.

Some critics, for example, have read “Bartleby” as a critique of the unreasonable expectations of *Vaughn*’s “reasonable man” standard. John Xiros Cooper sets Bartleby up as a perfect antithesis to Melville’s narrator’s “reasonable man, a type of an all-too-worldly everyman, who is willing to accommodate the conduct not only of Bartleby but, as we learn, of his other employees as well” (55). Bartleby, however, “upsets the balance” as he “refuses to bargain and confounds the system” (56). Cooper reads Bartleby’s unreasonability as a larger indictment of “the contradictory positioning of the human in an exchange economy,” suggesting the larger failings of reasonability as an imposed standard in law and commerce. One of Branka Arsić’s readings of “Bartleby,” meanwhile, sees Bartleby as a dual indictment of the tort standard of reasonability and Benjamin Rush’s conception of madness, suggesting that Melville uses concepts of “pulsation” to indicate that “the ‘reasonable’ process of producing a law that is constantly endangered by the unbalanced motions of bodies that are either too fast or too slow. As it turns out, the bodies that inhabit the space of the office are capable only of activity that negates its results – as if the heart of the law transforms itself into a lawless pulsation that cannot inscribe itself” (35). Like Cooper, Arsić contrasts the narrator, who “is the embodiment of the ideal keeper of the law and its reasonableness” (35), with Bartleby’s brazen unreasonability. Other critics similarly situate the legal fiction of reasonability with a larger legal critique: Robert Andrew Wilson suggests that Bartleby’s failure to integrate to society speaks to the failures of the penitentiary reform movement of the nineteenth century, while Matthew Guillen links the recalcitrant clerk to Melville’s understanding of product liability.

To these critics, *Bartleby* illustrates for the concept of the “reasonable man” the power that Kertzer indicates for legal fictions in other fields: “Defect must correct fault. Responsibility, culpability, and liability must be calculated through fictions displaying the lineaments and powers of moral subjects who thereby can be called to account for their actions” (141). The purported power of legal fiction to illustrate justice is, however, a double-edged sword, as legal fiction can both “stimulate the moral imagination to make justice conceivable and desirable, but also to set concept and desire at odds” (144). In the case of *Bartleby*, by creating a perfectly archetypal “unreasonable” man, Melville highlights the unrealistic standard of perfect reasonability imposed by *Vaughan*.

Other critics, however, seek to use the law to explain “*Bartleby*” rather than the other way around. Gyula Somogyi, for example, argues that if “Melville’s tale represents the acts of legal understanding as essentially unethical, only aimed at fixing *Bartleby*’s identity to ‘remove him to the Tombs as a vagrant,’” “within literature *Bartleby* can come alive again through the artifice of *prospopeia*, which, however, exhibits once again some of the pressing ambivalences that necessitated the recourse to the literary mode in the first place.” Arsić, who acknowledges that her readings of “*Bartleby*” “contradict or even negate one another, and often by reading the same paragraphs of the story” (10), also suggests that the dual tort and medical standards influence our reading of *Bartleby*’s character, demonstrating that he “realizes what the attorney does not: that Wall Street is not ‘deserted as Petra’ on Sundays only, but rather that it is dead empty all the time” (47). These readings are less concerned with the ability of legal fiction to “correct fault,” focusing instead on how authors use these legal fictions as literary devices within their texts.

This second focus – the ability of legal fiction to provide literary insight – is the focus of this thesis. As I will demonstrate in my first chapter, most research in the field of “law and literature” has historically mechanized literature as a tool to train lawyers and judges, as well as the students who will one day fill their shoes, to better understand the law. I suggest that recent trends in law and literature scholarship, which have reexamined these texts from a more bilateral framework, when combined with the excellent work done in transatlantic studies can yield important insights into the texts themselves as well as the legal fictions which they invoke. Here I am not referring only to legal fictions such as the “reasonable man” standard, which judges and lawyers acknowledge to be fictional constructs that nonetheless describe real-life standards. Instead, I suggest that, in at least the context of their fictional worlds, the authors whose works I am considering use artificial situations to illustrate the fictional elements of bedrock concepts of property and criminal law. My focus in this analysis is not a prescriptive policy recommendation, particularly as many of the laws I am using to evaluate these works have undergone major modifications and their contemporary counterparts look radically different than they did in the nineteenth century. Instead, I am considering how these legal fictions speak to the context of the individual texts and to a larger transatlantic literary-legal discussion between nineteenth century Scotland and America.

In *Novel Judgments*, William P. MacNeil argues the relevance of legal fictions to the study of law and literature by positing the importance of the nineteenth century’s “juridical imaginary” to both an understanding of nineteenth century law as well as its “continued *presence*. For a study of the nineteenth-century’s juridical imaginary is relevant to the here-and-now because that imaginary still informs, organises and

structures contemporary Anglo-American law, including notions such as rights, law's morality, justice, as well as the Rule of Law" (9). While my work is less concerned with the contemporary "continued presence" of those underpinnings, I similarly argue that the legal fictions found within the "juridical imaginary" are utilized not only by nineteenth century lawyers and judges, but are used in important ways by authors; as MacNeil argues, "as the privileged *and popular* medium of its era (like cinema and/or television of our own), the novel is coincident with the emergence of this juridical imaginary, bearing not-so-silent witness to its development" (9). Also, while MacNeil does not specifically invoke the work of transatlantic scholars, his work – with its emphasis on "Anglo-American law" and consideration of both British and American authors – is, like the work of many contemporary critics in law and literature, transatlantic in scope even if it does not self-consciously invoke transatlantic literary theory.

In this thesis, I intend to explore two of the legal fictions that underlie the concepts of inheritance and insanity as component aspects of property and criminal law, respectively. My purpose in exploring these areas of the law is not to demonstrate how fiction leads to an improved understanding of property or criminal law; instead, I aim to demonstrate that understanding how various authors have used these concepts allows greater insight into their fiction and a shared transatlantic reading. Rather than suggesting solely that authors use conventional legal fictions as plot devices, I suggest that their narratives uncover shared fictions across two distinct common law systems that both call certain assumed elements of the law into question in interesting ways and elicit additional understanding of the narratives themselves. Reading these authors through transatlantic

legal lenses and using preexisting legal understanding, can, I hope to demonstrate, suggest how these narratives employ new legal fictions in their narrative arcs.

I begin Chapter One by examining the dominant mode of criticism in law and literature, which has primarily focused on literature as a tool for critiquing legal doctrine and training current and future legal practitioners. Recent developments, particularly in Renaissance studies of law and literature, however, have begun to reexamine that paradigm by focusing more intently on the reverse relationship. I seek to harmonize those reevaluations with the methodology proposed by transatlantic study to argue that, in an examination of nineteenth century Scottish and American texts, literary studies can provide, to borrow Maria Aristodemou's terminology, both "instrumental" and "humanistic" value to the study of law and literature by both giving scholars more precise language to discuss the depiction and interpretation of legal plots and entities and to look for commonalities that transcend disciplinary and historical borders. I then situate my examination within the legal fictions of nineteenth-century Scottish and American conceptions of political and legal independence before moving into my textual analysis.

Chapter Two, my first chapter of textual exploration, focuses on property law and the question of inheritance. In this chapter, I read Walter Scott's *Rob Roy* and *The Bride of Lammermoor* alongside Nathaniel Hawthorne's *The House of the Seven Gables* to demonstrate how the narratives play with two dueling theories of inheritance law – meritocratic and feudal – and how those dueling legal theories impact the events of the tales themselves. After outlining tensions between older but still prevalent ideas of feudal succession and newer but admittedly flawed in execution notions of meritocratic land transfer, I explore how Scott's and Hawthorne's narratives demonstrate the inability of

their characters to reconcile these notions. Both *Rob Roy* and *The House of the Seven Gables* seem to demonstrate the triumph of deserving but legally alienated protagonists over their titled foes; both novels, however, end with the reconciliation of all parties through ostensibly love-based weddings that perform the legal function of uniting competing land claims, thus providing a suspiciously easy resolution to the legal conflict at the heart of both stories. While reconciliation makes the legal controversies at the heart of these stories ultimately irrelevant, the legal nihilism of *The Bride of Lammermoor* takes the opposite tactic, demonstrating both the individual shortcomings of the Ashton and Ravenswood families and the systemic failure of Scottish property law's feudalism to achieve equitable outcomes.

In Chapter Three, I turn to the question of insanity in Edgar Allan Poe's "The Tell-Tale Heart" and James Hogg's "Strange Letter of a Lunatic," arguing that both narratives complicate the legal definition of insanity by showing gaps between the legislative formulation and actual application to their fictional defendants. After developing the different viewpoints towards criminal culpability articulated by the American (but based on English law) and Scottish versions of the insanity defense, I turn first to Poe's "The Tell-Tale Heart." Poe's narrator, I argue, deliberately develops a narrative that takes him outside the protections of the insanity defense, insisting on his own culpability despite – or perhaps because of – the implications for his own punishment. Meanwhile, Hogg's narrative, both in its original draft form for *Blackwood's* and its published version in *Fraser's*, paints a different picture of a narrator who avoids criminal punishment but finds himself confined in asylum custody.

These two areas of inheritance and insanity collide in Chapter Four's exploration of Robert Louis Stevenson's *Strange Case of Dr Jekyll and Mr Hyde* and Frank Norris's *McTeague*, where I illustrate the relationship between the urban demographics of both the real and fictional versions of London and San Francisco as a product of slippage between inheritance laws and legal zoning and the title characters' mentally ill but probably not legally insane murderers. After demonstrating Stevenson's and Norris's link between psychology and the complex amalgamations of their fictional cityscapes, I demonstrate how these cityscapes also allow them to sidestep rather than embrace mental illness as an excuse for their murderous protagonists' crimes, indicting the institutions at the center of their texts as equally divided and flawed.

## Chapter One

### Transatlantic Law and Literature in Nineteenth Century Scottish and American Fiction

Since its modern incarnation as a field of academic critique, the enterprise known as “law and literature” has primarily focused on the mechanic relation of literature to law, i.e. how (or whether) literature can help lawyers be more technically proficient and become more humane practitioners. In recent years, key developments, particularly in the field of Renaissance studies, have shifted to a more equal examination of the reciprocal value of legal theory upon the study of literary texts. In this chapter, I propose my rationale for a similar inquiry into nineteenth-century transatlantic Scottish and American authors. This model proposes that law can augment literary criticism as both an instrumental mechanism for more precisely discussing historical institutions, hierarchies, and boundaries in the nineteenth century, and, particularly when coupled with transatlantic literary theory, as a humanistic lens through which to see beyond constructed demarcations of genre, be skeptical about historicist critique, and look for commonalities that transcend both disciplinary and historical borders. These transatlantic legal-literary readings, I will suggest, reveal important cross-jurisdictional legal fictions.

#### **The Place of Literature in “Law and Literature”**

Scholars working in the contemporary critical tradition known as “law and literature” cite two key originating texts as initial stimulants for interest in the field: Justice Benjamin Cardozo’s essay “Law and Literature” (1925) (later published in book form by Harcourt Brace in 1931) and James Boyd White’s textbook *The Legal Imagination* (1973). As John Hursh has recently pointed out, this picture is somewhat oversimplified: while the modern movement did originate with White and was heavily

influenced by Cardozo, “a nineteenth-century law and literature discourse enjoyed considerable influence well before Cardozo or White” (4). As Robert Ferguson argues in *Law and Letters in American Culture*, both John Adams and his son, John Quincy Adams, John Trumbull, Washington Irving, and William Cullen Bryant “were part of a now-forgotten configuration of law and letters that dominated American literary aspirations from the Revolution until the fourth decade of the nineteenth century, a span of more than fifty years” (5). This discourse was practical rather than academic, as demonstrated, for example, by Thomas Jefferson’s borrowing from Grotius, Pufendorf, Burlamaqui, Montesquieu, and Blackstone in the composition of his *Notes on the State of Virginia* (Ferguson 42-43).

Hursh further identifies significant precursors to Cardozo in Irving Browne’s *Law and Lawyers in Literature* (1882) and John Henry Wigmore’s “A List of Legal Novels” (1908) in the *Illinois Law Review*, and to White in Paul Squires’s “Dostoevsky’s Doctrine of Criminal Responsibility” (1937) in the *Journal of Criminal Law and Criminology*, Helen Silving’s “A Plea for a Law of Interpretation” (1950) in the *University of Pennsylvania Law Review*, and F.S.C. Northrop’s “Law, Language, and Morals” (1962) in the *Yale Law Journal*. These examples, Hursh suggests, demonstrate that, while “it is a mistake to think of the shift from early law and literature scholarship to the modern law and literature movement as a neat linear progression,” it is appropriate “to regard the ‘pre-modern’ law and literature movement as a relatively steady progression from early ad hoc attempts at law and literature scholarship to more rigorous and systematic analysis by later scholars” (13). Other critical reflections not listed by Hursh, but particularly important in this segment of critical history for their treatment of Scottish authors,

include John Marshall Gest's lecture "The Law and Lawyers of Sir Walter Scott" (1906), delivered to the Law Association of Philadelphia and subsequently published in *The American Law Register*, David Marshall's *Sir Walter Scott and Scots Law* (1932), and Charles Guthrie's "R.L. Stevenson" (1919), W.G.M. Dobie's "Law and Lawyers in the Waverly Novels" (1920), and T.P. McDonald's "Sir Walter Scott's Fee Book" (1950), each published in *Juridical Review*. In a theme I will return to later in this chapter, I will simply note here that all of the scholarship produced during this phase comes from lawyers and legal academics, and their writings largely focused on the applicability of literature to legal practice.

In addition to acknowledging Cardozo and White, it is also common practice in law and literature scholarship that, before beginning his or her particular argument, someone writing about law and literature must note that the critical enterprise loosely referred to as "law and literature" is actually divided into different methods of examining the relationship between legal practice and literary production. These sub-fields have traditionally been demarcated as "law *in* literature" and "law *as* literature," with a tertiary focus on "law *about* literature" as a more recent development. As my focus in this thesis is largely about "law *in* literature," I will briefly discuss the other two areas before proceeding.

Law *as* literature explores using the techniques of literary criticism to evaluate both the production and analysis of written law, both as legislatively enacted and judicially ruled. As a theory of constitutional and statutory interpretation, originalism, popular amongst United States Supreme Court justices such as Antonin Scalia and Hugo Black, is a legal application of literary formalism. Critics in this area also investigate the

literary merit of individual pieces of legal writing, such as W.N. Osborough's *Literature, Judges and the Law* (2008), which "is not about creators of literature dipping into the law. It is rather about the reverse traffic, the writer of the judicial judgment dipping into literature" (4). Osborough's critical project is founded in the hope that understanding "the use of literary quotation and allusion" in judicial opinions will be valuable to lawyers and non-lawyers: "the former through encountering judgments and judicial extracts of which they may previously have been unaware, the latter through learning something of how members of the judiciary have gone about their business of preparing judgments" (viii).

Scholars interested in law *about* literature explore the impact of laws governing and regulating the production and dissemination of literature, both fiction and non-fiction. Kieran Dolin describes this area of law as "a dynamic encounter. The boundaries of permissible speech and writing have always been transgressed by new and challenging texts, and legal regimes of containment have altered in their methods and principles" (*Critical*, 42). This is also an intriguing area of overlap between theory and real legal practice, as Richard Posner, one of the more prominent and controversial academics involved in law and literature who also serves on the United States Court of Appeals for the Seventh Circuit, authored the opinion in *Klinger v. Conan Doyle Estate*<sup>3</sup> denying the claim that the characters of the Sherlock Holmes tales should not fall into the public domain.

In his seminal text *The Legal Imagination*, James Boyd White broadly articulated his purpose in combining legal and literary study to form the field of law *in* literature as helping law students "become literary and cultural critics and to learn to apply their

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<sup>3</sup> No. 14-1128.

talents of analysis to the discourse of the law, both as that discourse is employed by others and as they themselves put it to work in their own writing” (xi). Since White’s foray into using literary scholarship to augment legal education, two loosely aligned camps have formed around the question of the efficacy of this area of critical study. The first, consisting of scholars like White, Richard Weisberg, and Robin West, suggest generally that the study of literary texts by lawyers and law students can, “through the rhetorical analysis of literary, legal, historical and philosophic texts... demonstrate that the writing and reading inherent in the law in a democracy constitutes a ‘culture of argument,’ a community open to the voice of the ‘other’ as well as its powerful” (Dolin, *Fiction*, 8). Gary Minda describes the aims of this camp as “distinctively humanistic” (158). On the other side of the equation, Richard Posner and Robert Weisberg suggest that White’s position takes the study of fiction far too seriously for the purposes of jurisprudential investigation. While “law is so common a subject of literature that one is tempted to infer a deep affinity between the two fields,” Posner argues “only rarely can we learn much about the day-to-day operations of a legal system from works of imaginative literature even when they depict legal trials or other legal processes. Law figures in literature more often as metaphor than as an object of interest in itself, even when the author is a lawyer (like Kafka) or a law buff (like Melville)” (*Law*, 21). Here, Posner distinguishes an ideological or theoretical approach to questions raised by legal discourse from the study of the procedural operations of legal practice: while fiction is not a replacement for rigorous technical legal training in civil procedure or contracts, “one can learn a great deal of *jurisprudence* from the works of literature” (*Law*, 21-22).

In addition to the division of these groups, scholars are also roughly divided along the critical lines of inquiry through which they engage the question of law and literature. In their introduction to *Shakespeare and the Law: A Conversation Among Disciplines and Professions*, Bradin Cormack, Martha C. Nussbaum, and Richard Strier identify four general clusters of scholarly engagement: “legally informed lovers of literature” (such as Richard Posner and Stanley Fish); those who argue that economic approaches to law are incomplete and that literary engagement can supplement missing links (such as Martha Nussbaum, James Boyd White, and Robin West); scholars within literary studies who “have argued that the study of literary texts can be enriched by attention to their legal and legal-rhetorical contexts;” and those who seek a literary angle to complement the “radical challenges to the political status quo” of critical legal studies (5).

Both White’s initial foray into the study of law and literature and the work of these four groups have, with the exception of Cormack, Nussbaum, and Strier’s third group, focused primarily upon the impact of literature upon legal practitioners, the law students who will someday replace them, and the institutions of law itself. William P. MacNeil suggests that the question “does literature have anything to do with or say about law?” can be answered in two ways: “law-as-a-process (of advocates and adversaries, courts and tribunals) speaks and is spoken to by literature-as-a-structure (character, plot, setting, etc.),” and, as a further step, literature can “have something to say about law *philosophically* and/or *jurisprudentially*, going *beyond* the socio-legal niceties of legal process’s literary representations... the ways in which literature comments upon, and/or critiques *theories* deemed central to legal philosophy, to jurisprudence” (3-4). Maria Aristodemou invokes a similar two-pronged approach in describing the legal approach to

law and literature as consisting of binary instrumental and humanistic purposes: “the instrumental view that literature can help produce better lawyers by teaching lawyers how to read, speak, and write more effectively; and secondly the humanistic belief that literature can make lawyers better persons by giving lawyers a sense of the complex nature of the human condition as depicted in ‘great’ books” (5). This justification is suggestive of Pleydell’s famous phrase in Walter Scott’s *Guy Mannering*: “A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect” (330). While Aristodemou’s instrumental theory focuses on the vocational writing and reading skills required by capable advocates, her humanistic category indicates that technical capability alone does not make lawyers rise to the level of statesmen. Nor is this element unique to Aristodemou: as Julie Stone Peters notes, “The defining feature of law and literature in its earliest formal incarnations was its commitment to the human as an ethical corrective to the scientific and technocratic visions of law that had prevailed in most of the twentieth century” (73). Aristodemou ultimately evaluates her project, which focuses on removing barriers and recognizing the freedom of literature where law is bound by precedent, on literature’s mechanic assistive capacity to create more technically proficient and humane attorneys.

Martha Nussbaum also invokes the humanistic improving power of literature in her defense of “the literary imagination,” stating, “I defend the literary imagination precisely because it seems to me an essential ingredient of an ethical stance that asks us to concern ourselves with the good of other people whose lives are distant from our own” (xvi). Similarly, C.R.B. Dunlop cites the humanistic rationale to assert that “literature

studies are an appropriate, even a necessary, part of legal studies. Fiction gives legal scholars the opportunity to get beyond the technical and circumscribed study of legal rules, and to look at law as part of the broader civilization” (64). Dunlop goes on to argue that, as the law is often accused of privileging the powerful at the expense of others, “[f]iction can serve as a corrective to this myopic tendency. After a lawyer or law student reads Charles Dickens’s *Bleak House*, he can never again be completely indifferent or ‘objective’ towards the client across the desk” (70). While Posner disagrees sharply with this camp about the humanizing effect that reading literature can have on lawyers (citing instead George Steiner’s memorable line, “The humanities do not humanize” (*Law*, 493)), he does suggest that a lawyer’s jurisprudential capability can be improved – without accounting for morality – by literature in the following ways: “acquiring surrogate experiences; obtaining templates for interpreting one’s actual experiences (but not practical lessons for living); sharpening one’s writing and reading skills; expanding one’s emotional horizons; obtaining self-knowledge; gaining pleasure; experiencing an echo-chamber effect; undergoing therapy; and enjoying art for art’s sake” (*Law*, 481-82).

The missing component from the early articulation of law and literature as a field of critical study – and from many of the field’s current leading thinkers – is the sense of a reciprocal relationship: what is the relevance of law and literature to literary studies? If literature can help improve legal education and our understanding of legal systems, can an understanding of law produce better literary scholars and insightful literary criticism? As Ian Ward acknowledges, “it must be acknowledged that what has gone before appears to be rather skewed. I write as a member of the legal academy. The ‘law and literature’ movement has been nurtured, in the main, from within this academy. Its commonly stated

virtues tend to focus on how best to educate and sensitize law students, and this apparent insularity has attracted critical commentary from within and without the legal academy” (*Brontës* 6-7). When efforts have been made to include members of the literary academy, literature professors have also frequently prioritized literature and literary theory as applied to law, rather than considering the inverse relationship. A landmark example of this came at a 1981 conference at the University of Texas, in which a number of legal scholars partnered with literary scholars Gerald Graff and Stanley Fish to discuss the question of law *as* literature or, as Sanford Levinson described (citing Christopher Langdell), “law was essentially a literary enterprise, a science of extracting meaning from words that would enable one to believe in law as a process of submission to the commands of authoritative texts (the rule of law) rather than as the creation of willful interpreters (with submission concomitantly producing the rule of men)” (374). While Graff and Fish disagreed with their legal colleagues (and with each other) in many significant ways, their arguments used literary conceptions to discuss legal issues – such as Fish’s unpacking of literary “chain enterprises” (552) to explore judicial precedent – without taking the reverse relationship under consideration.

Similarly, while Kieran Dolin’s *A Critical Introduction to Law and Literature* meticulously tracks the interdisciplinary nature of law and literature from the Renaissance to the present, his underlying approach chiefly adheres to the critical trend of prioritizing law while mechanizing literature. After citing Richard Weisberg and Jean-Pierre Barricelli for the proposition that “Law is associated with Literature from its inception as a formalized attempt to structure reality through language” (150), Dolin describes the following “structures and associations” identified by scholars in the field as:

- (i) literary representations of legal trials, practitioners and language, and of those caught up in the law;
- (ii) the role played by narrative, metaphor and other rhetorical devices in legal speech and writing, including judgments;
- (iii) how the supposed freedom of literary expression is contained and regulated by laws;
- (iv) the circulation of legal ideas in literary culture, and vice versa in various periods and societies;
- (v) the effects of social ideologies such as race and gender in legal language;
- (vi) theory of interpretation;
- (vii) the use of theatricality and spectacle in the creation of legal authority;
- (viii) the cultural and political consequences of new technologies of communication, such as writing, the printing press and the Internet;
- (ix) legal storytelling or narrative jurisprudence (10-11).

While a few of these associations, most notably (i) and the first part of (iv), could be construed to encourage an examination of law's relevance to literary studies, most place the literary in an ancillary role to legal studies. Dolin does, however, suggest that these categories are neither fixed nor definite; instead, "the border between law and literature has become a bridge, which will enable even more connections to be discerned" (*Critical*, 11).

The field of Renaissance studies has proven Dolin's point by serving as a site, or "bridge," in which legal and literary scholars have explored in greater detail the reciprocal side of law's relationship to literature. A key development came in July 1998,

when Erica Sheen and Lorna Hutson organized the “Renaissance, Law and Literature” conference at Wolfson College, Oxford University. As they described in *Literature, Politics and Law in Renaissance England*, the essay collection that came from the conference, it “was the first of its kind to focus on the Renaissance, bringing together scholars from literary studies, English legal history, critical legal studies, intellectual and social history and the history of political thought” (1). Paul Raffield and Gary Watt noted a similar interdisciplinary collaborative spirit in their introduction to *Shakespeare and the Law*, as their originating conference at the University of Warwick in 2007:

provided an ideal opportunity for scholars from different academic disciplines to come together and share alternative perspectives at this fascinating interface. The lawyers amongst us have learned to listen to the languages of other schools of learning. The non-lawyers have, we hope, discovered that not every lawyer has sharpened their mind by narrowing it. Through open discussion, and conference in the true sense of the word, we have begun to “piece out our imperfections,” but the conference and this book are early steps on the long path to discovering the potential for studies in law and the humanities (1).

The University of Chicago’s similarly heterogeneous conference in 2009 resulted in *Shakespeare and the Law: A Conversation Among Disciplines and Professions*. This text, edited by Braden Cormack, Martha C. Nussbaum, and Richard Strier, explores the question of Shakespeare’s engagement with the law and the theoretical dynamics of law and literature from literary, legal, and philosophical lines of inquiry. The papers and discussions at the conference and in the subsequent volume were designed to reflect the scholarly interests of the four groups mentioned earlier, including the very real divisions

in critical approach towards the relationship between law and literature: “In the spirit of the roundtable that concludes the volume, these conversations are intended to be collegial and good-humored but not necessarily harmonious or even harmonizable. In matters both of method and of particular interpretations, we have left our disagreements in place, including those that may reflect disciplinary protocols and those that are, in fact, just disagreements, unrelatable to institutional or disciplinary considerations” (7). This opens a place for scholars like Strier to contemplate Shakespeare’s inability to depict “a reasonably attractive and well-functioning legal system...in every instance in which Shakespeare seems to imagine such, and to give it the recognizable features of such, he also immediately raises issues that complicate, undermine, or call into question the possibility and even desirability of such a thing” (174). Strier’s argument does not seek to imagine better contemporary legal practice or legislative codification; instead, the law becomes an instrument with which the literary implications of *2 Henry IV*, *Measure for Measure*, and *The Merchant of Venice* can be better examined.

In *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509-1625* (2007), Cormack articulates a similar rationale for his investigation:

By pointing to a kind of hyper- or metalegality within a single legal system (or, indeed, between two systems), jurisdictional variation helps signify for a culture not only the possibility that norms might have more than one source, but also the fact that law is fundamentally improvisational, unfolding into doctrine only as and through practice. My second claim is literary: during the sixteenth and early seventeenth centuries, as English law became more homogenized, literary fictions

looked to instances of jurisdictional crisis and accommodation to explore how the fact and principle of jurisdictional heterogeneity specifies the implication of a given judicial order in alternative normative scenes; and to explore, in turn, how that dynamic might help articulate the terms in which literary writers authorize their own representations. In this double engagement with jurisdiction – as a principle that exposes law’s provisionality even as it opens a space of intensified literariness and literary authority – this study describes a relatively recent moment in which law and humanistic culture were in a complex but nonoppositional relation to each other (1-2).

Cormack’s formulation of “a complex but nonoppositional relation” between law and literature has an important resonance in the academic dialogue between Renaissance scholars on both sides of the spectrum. Indeed, moments of interdisciplinary intersection like these joint conferences and books by groups of Renaissance scholars have done much to mitigate Richard Posner’s warning that law and literature faces the continuing obstacle of “amateurishness – the plague of interdisciplinarity: the lawyer writing about literature without literary sensitivity or acquaintance with the relevant literary scholarship, the literary scholar writing about law without legal understanding” (*Law*, 6). Interestingly, Posner’s involvement in these conferences and discussions has, in many ways, helped provide the solution to his own diagnosis of the problem.

While scholars working in the Renaissance have provided an important model of interdisciplinary cooperation in studying law in literature, scholarship focused on the nineteenth century is still catching up; as Ward articulates, “Indeed, it might be argued that the influence of the literary text on debates regarding legal and political reform was

greater in Victorian England than it ever had been or would ever be again, which makes it perhaps all the more odd that the Victorian period had until recently remained a relatively fallow field of law and literature scholarship” (*Sex*, 25). Similarly, Margot Finn suggests that the nineteenth century “interface between legal practice, on the one hand, and legal discourse in law and literature, on the other, remains largely unexplored territory...by confining their inquiries to separate channels, scholars of law, literature and history too often navigate shared waters only to pass silently at a measured distance, like three ships sailing into the night” (134). Writing in 2007, Simon Petch suggested that, with a few notable exceptions, “the core ‘literature’ component of the Law and Literature canon has been extremely limited” (361). Within the past several years, however, a relatively small but important number of works<sup>4</sup> have focused on the relationship between law and literature in nineteenth century texts, both focusing on texts that Petch called “the recurrent focus of ongoing discussions in Law and Literature scholarship” (361) and in more commonly neglected works in this field of study.

While also on a smaller scale, there has been overlap between Renaissance studies and the nineteenth century in interdisciplinary collaboration, as another conference at the University of Chicago – once again hosted by Martha C. Nussbaum – resulted in *Subversion and Sympathy: Gender, Law, and the British Novel*. Nussbaum and her co-editor Alison L. LaCroix couch the purpose of this volume’s engagement in similar terms

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<sup>4</sup> In addition to the aforementioned Ian Ward, who has been particularly prolific with publications on the Brontës and Walter Scott, noteworthy contributions in this area include Brook Thomas’s *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe and Melville* (1987); Lisa Rodensky’s *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (2003); Matthew Wickman’s *The Ruins of Experience: Scotland’s “Romantick” Highlands and the Birth of the Modern Witness* (2007); Bridget M. Marshall’s *The Transatlantic Gothic Novel and the Law, 1790-1860* (2011); and William P. MacNeil’s *Novel Judgements: Legal Theory as Fiction* (2012).

to that pursued by the Renaissance conferences: “The volume focuses on issues of gender in the British novel of the eighteenth and nineteenth centuries, but it has a larger aim: to reinvigorate the law-and-literature movement by displaying a range of ways in which literature and law can illuminate one another, and in which the conversation between them can illuminate deeper human issues with which both disciplines are concerned” (5-6). The approaches taken by contributors to this conference – who, while mostly legal scholars, did include literature professors Amanda Claybaugh and Blakey Vermeule – exemplify the still latent conflict over the degree to which legal scholarship matters to literary criticism. After articulating the value of literature to law, Nussbaum and LaCroix indicate “The other side of this coin is that literary works themselves can often be better understood by studying them in connection with their legal context” (11), citing Claybaugh’s scholarship in particular as an example of this kind of practice. Posner (participating once again), on the other hand, disagrees in his examination of Jane Austen’s novels, arguing “the further details that can be found in the secondary literature [about English law in Austen’s novels] are irrelevant to the novels as literature. All that is important for their readers to know is that English law and custom, reinforcing the inherent financial tensions of a rentier class, feeds the obsession with money, and more particularly with obtaining money through marriage, that pervades the novels” (“Jane Austen,” 88). Instead, Posner proposes,

The value for lawyers and judges and law students of great literature that is as remote from their quotidian concerns as the romantic comedy of Jane Austen is that it stimulates the imagination; increases one’s expressive resources; provides psychological insight; creates a sense of how social norms and institutions

(though they are not our norms and institutions) influence behavior and make the reader a better, a more careful, responsive reader; increases the reader's sensitivity to irony, incongruity, and folly; and, like philosophy and history and the social sciences, broadens one's intellectual horizons" (Jane Austen 95-96).

As part of their paradigm for the conference and collaborative text, Nussbaum and LaCroix do not attempt to reconcile the tension between these approaches: "Taken as a group, the papers do not have a 'bottom line,' either about normative social issues or about the relationship between literature and the law. This is as it should be, since one hallmark of good work in 'law-and-literature' is to energize debate and complicate our thinking" (21). While this holistic approach to law and literature is admirable, it leaves Posner's challenge hanging: for literary texts that do not explicitly (or, in some cases, do explicitly) feature legal plots, is there any value to be found in reading through the lenses of law and literature? Is Posner correct when he asserts that "the place of great literature in the education of lawyers is in college courses and leisure reading – though only college courses that eschew the politicization and obscurantist theorizing that permeates today's literary criticism" ("Jane Austen," 96), or can literary criticism, in fact, do more than merely "politicize" and "obscure" the texts themselves? I would respectfully suggest that, as a critical enterprise, a bilateral reading of both literature and law without prioritizing the paradigmatic aims of one discipline over the other does have great value in illuminating both legal *and* literary insights. My individual response to Posner's challenge posits that the literary field of transatlantic studies provides a productive site for joint inquiry.

### **“Shared Concerns and Stylistic Introductions” in Transatlantic Studies**

In their introduction to *Transatlantic Literary Studies: A Reader*, Susan Manning and Andrew Taylor describe the basis of transatlantic theory as “the questioning of a largely Romantic and nineteenth-century idea of the nation-state as an unproblematic location of definition and character” (3). While contemporary concepts of nationality “are created and sustained through narratives of belonging and affiliation that bind geographically distinct people together. Our current global patterns of connection and interrelation suggest that the autonomously secure national space – whether defined through tangible *or* imagined characteristics – is no longer a viable category of self-definition” (3). In discussing the impact of transatlantic theory on the field of American studies, Robert Gross sees the turn towards the transnational as a shift that “has offered a way out of ideological impasse – the separatist phase is largely over. It has given way to a new appreciation of the ‘hybrid’ character of American life” (381).

This horizontal emphasis on hybridity is what Susan Manning argued in her final book, *Poetics of Character*, served as the primary justification for transatlantic studies: “confluences that a ‘vertical’ literary history would fail to notice...might emerge in a network of shared concerns and stylistic introductions” (33). Manning’s project reconnects “‘sequential’ literary history” with eighteenth-century rhetorical imperatives of character, not in an effort “to slight the value of historical readings of literature, but to supplement these with a poetics of imaginative writing and reading in which the category of the ‘literary’ rediscovers itself as the rhetorically dense, complex medium through which the comparative underpinning of historical reading might itself be apprehended” (5). This methodology, Manning argues, radically opens the scope of transatlantic

inquiry: “Putting ‘literary’ and ‘history’ back into critical apposition will re-enliven a compound of mutually transformative elements in which ‘the transatlantic’ may become something more like a set of conditions or possibilities of relationship than – like the ‘literary’ in ‘literary history’ – a qualifier or particular case of a substantive” (6).

While the underlying premise of transatlantic criticism is the importance of opening access to new webs of mutual relation through breaking down these pre-conceived “historical” or “literary” barriers, scholars recognize that this is often more difficult in practice than it is in theory. Jocelyn Almeida has noted the challenges of the “structural pervasiveness of the North Atlantic” in exploring the complex literary traditions of pan-Atlantic cultures; while she credits thinkers such as Paul Gilroy and Paul Giles for asserting a theoretical model that embraces multilingual and transnational contexts, she notes that the authors they study “remain confined to English-speaking writers” from “Britain and the United States,” and therefore do “not fully account for the translations of language, cultural exchanges, and creolizations that emerge from this region” (4-5). Her recent book, *Reimagining the Transatlantic, 1780-1890*, seeks to fulfill the potential of Gilroy’s and Giles’s theoretical models with concrete examples, as she reads thinkers such as Francisco de Miranda, Toussaint Louverture, and Charles Darwin as part of a pan-Atlantic – and transatlantic – conversation. This is not to say that lost contexts cannot be found, however, in the study of Anglo-American authors. Using similar methodology to that employed by Almeida in her examination of Ralph Waldo Emerson’s reading and reimagining of Samuel Taylor Coleridge, Samantha Harvey draws attention to “the rich transatlantic conversations that were indispensable for early nineteenth-century American letters,” (13), asserting “if these different strands of

Romanticism [European, British, and American] are divided today, it is a reflection of the preferences of the academy, rather than any inherent division” (14). Similarly, Amanda Claybaugh argues in her exploration of Charles Dickens’s participation in suffrage campaigns and international copyright law campaigning that “the Anglo-American scope of social reform points to the need for a transatlanticism that is as attentive to the connections across national boundaries as to the differences between nations, as attentive to the concrete collaborations of individuals and groups as to the imaginings of nations as a whole” (“Towards,” 439).

Just as Almeida’s wide-ranging exploration of multilingual and multicultural sources has led to a greater understanding of the literatures of the pan-Atlantic, and Harvey’s and Claybaugh’s studies have similarly explored networks of complexity within the parameters of British and American writing, I suggest that law and literature, read through the critical lenses of both literary criticism and legal theory, can contribute to an increased understanding of the contexts of nineteenth-century authors and reveal important insights into their texts. In *Poetics of Character*, Manning identifies the “shared historical, genealogical and – above all – linguistic traditions, and in their lateral geographical situations, transatlantic texts in the eighteenth and nineteenth centuries were at once distinctive and representative of other relational conditions that offered grounds for comparison” (9). These shared characteristics allow her to approach her comparative readings “based not on extrinsic grounds of authorship, geographical placement or recovery of historical readers reading, but in the critical potential of a particular practice of comparison continuous with eighteenth-century thinking that expressed itself pre-eminently in relational modes of perception and understanding” (9-10).

The vocabulary used by these transatlantic scholars resonates in important ways with Maria Aristodemou's dual function justification for law and literature: the "instrumental" and the "humanistic." I would suggest that, for the "third group" of scholars identified by Cormack, Nussbaum, and Strier, e.g. literary scholars who "have argued that the study of literary texts can be enriched by attention to their legal and legal-rhetorical contexts" (5), the combination of law and literature and transatlantic criticism can similarly fill both an instrumental and a humanistic justification for the value of literature in law and literature. As many of the scholars previously listed have argued, an understanding of law, legal institutions, and judicial precedent can give literary scholars much more precise language for discussing the depiction and possible interpretations of these entities, as well as historical institutions, hierarchies and boundaries, and polemics of power in nineteenth century fiction. Bridget Marshall, for example, takes this approach in her study of law in the transatlantic Gothic novel, where she contends "that the appearance of such legal matters in both form and content is not mere chance; rather, the legal preoccupations of the Gothic novel can be traced to contemporary anxieties about the nature of justice and to specific legal challenges in the evolving Common Law system that had implications on both sides of the Atlantic" (2).

The humanistic, on the other hand, suggests the capacity of a transatlantic law and literature critique to look beyond the sometimes provisional demarcations of genre and national origin, be skeptical about both historical and post-structural approaches to literary criticism, and, by examining the integration of crucial legal and jurisprudential questions in fiction, to look for commonalities that transcend both disciplinary and historical borders. Here, I do not mean to completely mirror Aristodemou's humanistic

argument by suggesting that the study of law will make literary scholars better people and better citizens, although I do hope that readers of Stevenson will not follow in Henry Jekyll's footsteps by experimenting with mind-altering substances and clubbing elderly Members of Parliament. Rather, the humanistic justification of this form of literary criticism suggests its ability to approach inherently human questions from an international and interdisciplinary point of inquiry; as Claybaugh notes in her discussion of Emerson's and Coleridge's transcendentalism, "it is necessary to address the full interdisciplinary spectrum of their ideas, not only because their literary works were deeply informed by other disciplines, but also because the modern boundaries between literature, philosophy, theology, and science simply did not exist in their time" (*Novel*, 13). As noted previously, the distinctions between law and literature in the nineteenth century were similarly blurred.

What I am essentially arguing, therefore, is that the incorporation of legal history and legal theory into literary criticism can both provide a more concrete historical basis for analysis by grounding literature firmly in the legal concerns of its time, and can also provide a platform for questioning the very historicity of those claims (or, as legal precedent is determined by the victory of a particular set of "facts," a questioning of the prevailing "factual" narrative) by allowing readings of texts across national, genre-specific, and legal lines. The result of these readings, I will suggest, reveal the existence of common literary threads across Scottish and American national and jurisdictional lines, as well as a sense of how literary texts from each tradition deal with complex legal fictions across both legal systems. Before delving into particular texts and legal issues, I will discuss the legal framework of American and Scots Law in the nineteenth century by

noting the inherent legal fictions in each nation's narratives of political and legal self-characterization from England.

### **Legal Fictions in American and Scottish Narratives of Political and Legal Independence**

The legal history of the United States is paradoxical by nature, as a nation that secured its political autonomy from Great Britain through armed revolution nevertheless used British principles of government and common law to create social continuity and provide the foundation for social cohesion. As Lawrence Friedman observes, “[t]he colonies won independence after a long war; but unlike say the French or the Russian revolutions, there was no sharp legal break with the past. The common law system (American style) remained intact” (*A History*, 32). This period of derivation and adaptation featured three key areas of confluence: the individual British identification of many early Americans, the nature of British imperial influence on American legislatures and judiciaries, and the development of American legal training.

Friedman's argument about the essential transfer of English legal principals to United States jurisprudence centers on the premise that colonial American laws prior to independence were “basically English, but a stripped-down version” (*A History*, 26). Each colony developed in its own way based on its citizenry and needs, although, as England remained the primary trading partner for each colony and the few resources available to lawyers and judges were English sources (most notably William Blackstone's *Commentaries on the Laws of England*), English law remained the backbone of colonial jurisprudence. The process of colonial experimentation “tested what happened to the common law when it was yanked out of its socket and transported to a

new place, a kind of wilderness, where the English settlers could make a fresh start, and where the encrusted social structure of England had no chance to take root” (Friedman, *A History*, 30). As the colonies were largely left to operate according to their best understandings of common law, Friedman asserts that this resulted in “continuity, not overthrow: continuity of the colonial traditions, laws, and ways of life” (*A History*, 32).

Interestingly, the common law may never have been intended to live beyond the shores of England. In his examinations of the legal opinions of Sir Edward Coke (who served as Solicitor General for England and Wales, Attorney General for England and Wales, Chief Justice of the Common Pleas, and Chief Justice of the King’s Bench from 1592-1613), Daniel J. Hulsebosch observes that “Coke did not believe that subjects enjoyed the common law and many related rights of Englishmen while overseas” (439). The colonial embrace of Coke’s legal theories can best be understood by viewing “English legal culture as a literary canon and a set of practices, with overseas actors drawing creatively upon the canon as they performed the rituals of the rule of law against a new, dynamic backdrop” (443). To Hulsebosch, Coke was therefore a linchpin of jurisprudential reform and the key figure in “transform[ing] the common law from a limited royal legal system into a national constitutional resource...this constitution’s ablest curator and creator on and off the bench” (443-45). After reviewing Coke’s contributions to common law as a whole – including his “most important” contribution of providing the foundation of separated powers by splitting judicial and executive functions, as well as authorizing judicial review of legislative action – Hulsebosch sets up Coke’s key dichotomy, one which is crucial for the discussion of English and American legal and literary interaction: the distinction between inherited and conquered lands and

the legal rights of emigrant settlers. Coke was uncharacteristically silent on the course that colonial legislative power should take. Although he indicated that the English Parliament, as another legislative body, should not have legislative domain over the legislatures of individual colonies, he offered no opinion on whether said colonies should elect their own parliaments or should merely be ruled by the king through his Privy Council (462-64). The second part of the dichotomy – Coke’s assertion that property rights extended to Englishmen in non-English colonies – were appropriated and separated from his original argument by American legal thinkers, as Coke’s colonial readers shifted “from a predominately jurisdictional to a substantive understanding of the common law” (467).

In addition to the legal heritage of influential thinkers like Coke and Blackstone, the background of key colonial leaders before, during, and after their immigration to the colonies had a notable impact on their adaptation of English common law and its subsequent embrace by their descendants. Martin H. Quitt documents the “cultural evolution over space – from England to Virginia – and over time – from ‘charter settlers’ to mid-century immigrant leaders and from the latter to their Virginia-born sons” (629). Despite a tradition of historical scholarship that views immigrants as transplants and their descendants as heirs of traditional English culture, Quitt distinguishes the “highly attenuated or conflicted relationships” that mid-century immigrant leaders held with both their mother country and their ancestral forebears, arguing that their roles as colonial leaders in Virginia “provided them with an opportunity to break away from, rather than merely replicate, patterns of culture derived from their familial backgrounds” (630). Quitt links this initial breakage to Michael Kammen’s conception of refraction, described by

Kammen as an action intended “to break the course of something, and turn it away from its direct line of continuity” (6). For the first wave of colonial leaders, Quitt contends, this refracting process can be attributed to their distinguishing commonality as younger sons who immigrated due to primogeniture and gained an enhanced sense of personal autonomy due to their “preoccupation with work” (646-47). In contrast, their sons and grandsons “become more traditional” as modified colonial primogeniture laws allowed younger sons partial inheritances, resulting in increased personal autonomy and, in the case of second-generation immigrants such as William Byrd, strengthened ties with England and English customs (648-50). As Joseph H. Smith has noted, these ties were likely also secured by the influence of the King’s Council, a lawyer appointed by the Board of Trade to render opinions on legislation relating to the colonial judiciary, whose influence “probably shaped the colonial judicial establishments more than any other single factor” (1211).

The effect of this multigenerational refraction came to the forefront of colonial governance as these immigrants and their descendants became political leaders and legal administrators in the colonies. Warren M. Billings examines the interplay between these new leaders, few of whom “had any previous judicial or legislative experience,” and the English common law that they “fashioned into a device for defining the Creole society they helped to raise up in the Old Dominion” (277-78). Billings identifies three groups who contributed to the ascension of English common law as the dominant power in the governance of Virginia: the governors-general, many of whom were ineffectual and alienated Virginia colonists by restraining their autonomy, thus minimizing the efficacy of executive office; the surge of post-Virginia Company immigrants, whose numbers led

to the swelling of public offices and the establishment of local courts as the main instrumentality of justice in Virginia; and the second- and third-generation Virginians who served as justices of those local courts, who, as described by Quitt, had strong cultural ties to England and legal ties to English common law (279-80). As these new justices sought to carve out a distinct role from the ineffective office of the governor-general, the “legal roots” of English common law enabled them to become “the instruments by which common law was fashioned to the colonial setting” as a mechanism for surviving and thriving in the New World (Billings 281). The relative inexperience of the justices, coupled with the lack of formal training mechanisms such as the Inns of Court in London, meant that these justices and the lawyers who argued in their courts had to improvise the application of Old World common law (based on whatever texts they were able to access) to the hard facts of life in the New.

David McCullough observes this process in the legal career of John Adams, who was educated as a lawyer in Boston through the library of his mentor James Putnam; the young apprentice plowed through “Wood’s four-volume Institute of the Laws of England, Hawkins’s Abridgment of Coke’s Institutes, Salkeld’s hefty Reports, Coke’s Entries, and Hawkins’s massive two-volume Pleas of the Crown in a single volume that weighed fully eight pounds” (43). As he later wrote to Benjamin Rush, the young Adams was not overly enthralled by his study: “Can you imagine any drier reading?” (McCullough 43). Despite the tedium of his apprenticeship, his study of English common law nevertheless led him to declare, “I then rejoiced that I was an Englishman, and gloried in the name of Britain” (McCullough 43). Adams’s legal studies also influenced the publication of his first political writing, *A Dissertation on the Canon and the Feudal Law*, which was “a

statement of his own fervent patriotism and the taproot conviction that American freedoms were not ideals still to be obtained, but rights long and firmly established by British law and by the courage and sacrifices of generations of Americans” (McCullough 59). This model of a Massachusetts lawyer turned political revolutionary echoes those of Virginian justices seeking to use a contiguous model of English common law to establish political American independence. This “sea change” (Friedman, *A History*, 30) highlights independence not as a break, but as a continuity: independence was sought primarily to maintain the legal rights that colonists had come to think of as their own.

As part of his larger argument about the Founders’ intent regarding the judiciary, Thomas Grey asserts that the prevailing legacy of English common law in the American adaptation was the way that colonists thought about the law as inherently “fundamental” (850). He cites three maxims of the “traditional” English concept of common law: 1) the legal supremacy of an overriding fundamental law to which all branches of government were subservient, 2) the law’s origin, which “drew its content from sources other than enactment, whether usage and custom, or reason and natural justice,” and 3) judicial enforcement (850). Grey then argues that, while the trauma of Cromwell’s revolution and the events of the Restoration, Glorious Revolution, and Hanoverian reigns led to England’s transition away from this model into one dominated by Parliament, the notion of fundamental law was strong enough in print form and in the common vocabulary of political rhetoric to significantly influence colonial thinking (865). This indicates a crucial split in American revolutionary thought as exhibiting a rejection against the institutions of English law, but not of the law itself. J.R. Pole concurs with this idea,

arguing that the revolution was an implementation rather than a rejection of common law.

Two different scenarios unfolded in post-Revolution American jurisprudence:

Where the laws as enacted or as interpreted by the states' courts marked distinct departures from those of the colonies, they could reasonably be claimed to be both new and republican, gains to be ascribed to the Revolution. Where they still followed or deferred to English law, and where the English-derived common law continued to guide American judges, even the claim to legal autonomy might have to be modified into a species of jurisprudential interdependence (124).

The development of federal and state judicial decisions and legislative enactments followed both patterns: while the "deep continuities" (139) of many common law principles survived the Revolution, other laws, such as dower rules in Massachusetts, were altered (154). Pole concludes that the end result of these two scenarios was a sort of institutional division: Congress and state legislatures gradually moved away from English legal principles in forming their own statutes, while the judiciary retained the English common law power of judicial independence and, in many cases, used English common law as precedent in ways not contemplated by their legislative counterparts (157-58).

Pole's arguments are especially cogent in their depiction of the divided and paradoxical nature of post-Revolutionary American attitudes towards common law. A similarly paradoxical attitude towards the independence of Scots law developed during the Parliamentary debate regarding the Act of Union and in the years following its enactment.

The Act of Union (1707) ostensibly created a political union between Scotland and England while maintaining the independence of Scots law and the Scottish legal

system. However, this legal independence was immediately put to the test, and was in flux throughout the eighteenth and nineteenth centuries in three key areas: the waning influence of pedagogical framework of Roman law on Scottish legal institutions and education, tension between Scottish and English separate national identities and the new amalgamated concept of “British identity,” and the clash between the bargained independence of Scottish law and legal institutions in the Act of Union and subsequent English encroachment.

As an independent legal system, Scots law was shaped by Norse law’s “udal” system of land ownership, English feudalism under Edward, the Roman Catholic Church’s Canon’s influence on family law, and Roman law’s institutional impact on the Court of Session (Clark 2-4). While Norse and Canonical elements remain in contemporary Scottish land use and family law codes, legal scholars typically categorize Roman law as the primary non-English influence on Scots law. Although Scots law is commonly classified as a “mixed” or “hybrid” system of law due to its incorporation of elements of Roman law, this is not due to any substantial physical ties to Roman jurisprudence; as David Walker observes, “the influence of Roman law on Scots law was not effected by the Roman occupation of the South of Scotland in the second century” (113). Instead, the influence of Roman law on Scots law begins in the sixteenth century as, “with scant opportunity for the study of law at Scottish universities, Scots law students travelled to France and, later, the Netherlands for legal instruction” (Clark 4). As Stephen D. Girvin has documented, despite the Faculty of Advocates’ 1610 requirement that barristers could only be admitted to the bar after study at university for at least two years, “there was no means of attaining the required degree of knowledge in Scotland at

that time” (127). Scottish universities only bestowed honorary law degrees until the middle of the nineteenth century and, despite some exceptional chairs in law, “the poor reputation of the Scottish law faculties until the latter half of the eighteenth century encouraged prospective lawyers to study civil and canon law at established continental law schools, initially in France (Paris was able to boast a law school founded c.1202) and, following the reformation, in the Netherlands” (Girvin 130). Those who held chairs in Scottish universities were also products of European universities, which partially diminished their credibility as “The holders of the Chairs of Law were later criticised as ‘only echoes of Dutchmen’” (Girvin 130). As a result, “in a formal sense Scots law was not part of the classical syllabus and university education” (Saville 55). European legal training also had an institutional as well as educational effect, as the 1532 creation of the Court of Session was based on Roman judicial models (Clark 4). In addition to Old Testament laws, “Scots lawyers relied on manuscripts and law books detailing the Canon law and the *Curia Romana*, as well as reports of cases and statutes relevant to their specialisation” (Saville 55-6).

This trend began to reverse in the middle of the eighteenth century through the nineteenth century. As a logistical impediment, the Napoleonic Wars prevented Scots students from going to the Continent for legal education (Ashton 33), forcing would-be legal scholars to find other avenues for study. However, this merely exacerbated a trend away from European education dating from the 1750s, which Girvin credits to “the abandonment of the bar by gentlemen’s sons in favour of other, more attractive, careers” (130). Additionally, the Faculty of Advocates began to make provisions for would-be barristers to credibly obtain their legal educations at Scottish universities. Most students

only took their required courses rather than graduating with the degree of LLB (formed in 1862), as “this degree was regarded from its inception as a mark of academic rather than professional distinction” (Girvin 133). Both the LLB and the lower degree of BL, instituted in 1874, emphasized the hybridity of Scots law as Scottish and “British” rather than Roman; instead of the old requisite Roman law courses, the BL “comprised examination in civil law, Scots law, conveyancing, and one further law subject” (Girvin 133). Roman law still played a role in Scots legal education, including the requirement of a Latin thesis until 1966 (Girvin 128), but its influence did not approach its heights from earlier centuries.

This hybrid sense of Scottish legal education reflected the larger issue of Scottish national identity under the Union. The relationship between Scotland and England at the Act of Union was problematic at best; as John Clerk wrote in his copy of George Lockhart’s *Memoirs Concerning the Affairs of Scotland* (1714), England was “a Country and people whom the Scots hated more than any other nation on account of old grudges” (Whatley 30). Clerk’s views as a Scottish supporter of the Union were unpopular in his lifetime: as Christopher Whatley notes, he wrote his *History of the Union* in Latin and refused to allow its publication (31). From the issuance of the articles to the final decision to unite, “the country was ablaze with disorder” (Whatley 297). As Karen Bowie suggests, this already latent tension extended to the popularly printed – if not necessarily universally held – view that the very Scottish Parliamentarians who had consented to the Union had abrogated both their national identities and their duties as representatives. Bowie cites a contemporary reporting of the Union Parliament who, “when he considered ‘how opposite the same parliament [in] 1703 wer with thir measures, I incline to think a

Scots parliament that sits beyond 2 or 3 years are so far modelled by English Influence that they are no longer vox populi” (78).

While tensions cooled from their high point immediately following Union, the resulting political alliance created a somewhat ambiguous state of national identity. David Allan suggests that “three broad positions on national identity might be delineated in these dramatically altered circumstances of the first post-Union century: retaining older notions of exclusive Scottishness; abandoning that Scottishness for full immersion in a new British identity; and hovering ambivalently somewhere between these two extremes” (34). Allan suggests that the first position, “the preserve of unreconstructed conservatives who wished simply to turn the clock back to 1707,” had largely disappeared by the 1770s, when “strong expressions of Scottishness had begun to serve new and quite different political purposes” by focusing on progressive needs within the framework of the Union (36). Any British sentiment that “simply supplanted any remaining attachment to Scotland was even less common than the long-term survival of militant anti-Unionism” (37), leaving the third category: ambiguity between Scottish and British identity.

This sense of disconnected national identity combined with the shift away from Roman institutional values is indicative of the tension between Scotland’s bargained legal independence in the Act of Union and subsequent English encroachments upon that jurisprudential autonomy. As a result of intense negotiations during the drafting process, Article XIX of the Treaty of Union specified “That the Court of Session or Colledge of Justice do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same

Authority and Priviledges as before the Union.” The independence of Scots law, however, was modified by the following clause, “subject nevertheless to such Regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain.” That same phrase, “subject to Regulations by the Parliament of Great Britain,” was incorporated into the survival of the Scottish Court of Justiciary the Heritable Rights of Admiralty and Vice-Admiralties in Scotland, and the subjection of inferior Scottish courts to the Scottish Supreme Court rather than “the Courts of Chancery, Queens-Bench, Common-Pleas or any other Court in Westminster-hall.” Notably, Articles XX and XXI, which preserve Scottish heritable offices and the rights and privileges of the Royal Burroughs in Scotland, do not contain the modifying clause allowing regulatory power to the Parliament in Westminster.

Parliament’s regulatory power was particularly influential in the new prominence of the legal doctrine of *stare decisis*, in which legal decisions become precedents upon contemporary courts under their jurisdiction. While *stare decisis* had long been a staple of English jurisprudence, “owing to its deductive heritage (by the influence of Roman law) Scotland did not historically follow a strict system of judicial precedent akin to that which had developed in England” (Clark 37). As Clark notes, while Scottish institutional legal authorities such as Viscount Stair and John Erskine rejected the principle of *stare decisis* as applied to Scots law, “principally caused by an increase in case reporting, and arguably the influence of the English-dominated House of Lords (sitting as a court), in the 18th century Scotland gradually adopted a more rigid system of judicial precedent” (37). As a result, by the beginning of the nineteenth century English law exerted a dominant influence on the Scots legal system. Christina Ashton identifies two primary

factors behind the new dynamic: “the House of Lords now heard all Scottish civil appeals; and the Westminster Parliament passed all laws” (33).

While it would be overly simplistic to assert that American and Scottish political-legal relations towards England in the nineteenth century are perfect inverses of each other, there are distinct elements of that mirroring. By the beginning of the nineteenth century America was politically independent but, from a jurisprudential if not a judicial standpoint, dependent – and willingly dependent – on both English precedent and on contemporary decisions by the House of Lords, which American legislatures and judges frequently adopted into federal and state law. Scotland, meanwhile, was politically allied with England but ostensibly maintained institutional and jurisprudential independence, although Parliamentary oversight eroded many of the barriers preserving that independence. Characterizations of either nation as independent thus rely on a certain degree of legal fiction, and those legal fictions, I argue, are key aspects of the texts that I will consider in the following chapters.

The particular questions of property and criminal law that I propose to examine in this thesis – particularly, issues relating to inheritance and insanity – both depend upon and transcend the immediate structure of their nation’s legal codes and judicial decisions. While we have to understand, for example, the particulars of different Scottish and English attitudes about equity to understand Scott’s use of the term in *The Bride of Lammermoor* and its overarching implications for the text, Hawthorne’s and Scott’s similarities suggest an affinity between American and Scottish approaches to conceptual notions of equity – and the common legal fictions of each approach – that, in many ways, transcends these differences. In the following chapters, I begin with separate studies of

property law in Chapter Two by exploring how Scott and Hawthorne fictionalize the concepts of ownership and inheritance and criminal law and, in Chapter Three, by discussing how Poe and Hogg problematize the rationale for the American and Scottish versions of the insanity defense. I will then explore ways in which these two sub-areas of the law intersect meaningfully in Chapter Four by exploring urban pressure due to the shortcomings of property and inheritance law coupled with the inadequacy of the insanity defense.



## Chapter Two:

### “In Equity Rather than in Law”:

Aristocracy, Meritocracy, and Inheritance in *Rob Roy*, *The Bride of Lammermoor*, and  
*The House of the Seven Gables*

In Part I of *Democracy in America*, Alexis de Tocqueville claimed that, in the United States, the best cure for what he viewed as the faults of English aristocracy lay in “the law of inheritance,” which he called “the last step on the way to equality” (60). De Tocqueville did not claim that this eradication of aristocracy was due to an inherent American spirit of generosity – “There are just as many wealthy people in the United States as elsewhere; I am not aware of a country where the love of money has a larger place in men’s hearts or where they express a deeper scorn for the theory of a permanent equality of possessions” – but, rather, that inheritance law found a way to mediate greed into social diffusion, as “wealth circulates with an astonishing speed, and experience shows that rarely do two succeeding generations benefit from its favors” (64). While de Tocqueville set up this allegedly meritocratic view of inheritance law as an American rebuttal to a British feudal aristocratic tradition, this was not entirely accurate. As I discuss below, by the time of *Democracy in America*’s 1835 publication, a number of legal reforms suggested that meritocratic inheritance theories had gained ground in England and Scotland as well, although, in both Britain and America, their ancestral aristocratic roots were still far from decayed.

In this chapter, I will examine three texts by Walter Scott and Nathaniel Hawthorne – *Rob Roy*, *The Bride of Lammermoor*, and *The House of the Seven Gables* – through the lens of property law generally and inheritance law specifically. Scott’s two

novels deal with the tension between English and Scottish versions of property law: in its preservation of feudal tenure, Scots law maintained seemingly antiquated aristocratic structures when contrasted with Scott's depiction of English inheritance law as relatively meritocratic. Hawthorne's novel incorporates a similar theme both in its use of a single estate – despite the relative newness of European settlement in America, the Pyncheons and the Maules treat the House of the Seven Gables like one of Scott's ancient ancestral estates – and in its seeming endorsement of meritocracy, but complicates the question by resolving the novel's central concern with a marriage that bears the hallmarks of an aristocratic property alliance. Ultimately, I suggest that in their treatment of property law's conflicting models, Scott and Hawthorne's stories can be read to expose the very concept of ownership itself as a legal fiction: rather than owning the land, the land effectively owns the characters. In these stories, the difference between the surviving characters and those who fall is the ability to relinquish ownership of a particular piece of property.

Through their portrayals of inter- and intra-familial property conflicts, Scott and Hawthorne explore the tension between older legal doctrines of title conveyance through monarchical or legislative grant and more modern “republican” doctrines such as purchase, homesteading, and adverse possession. In so doing, they both set up narratives that seemingly endorse a republican vision of property law but complicate it through an aristocratic resolution. While many of these core concepts are similar across English, Scottish, and American laws, Scott and Hawthorne make important use of the fissures between the legal systems: Scott explores the friction between meritocracy and aristocracy in his depictions of Scottish feudalism and English inheritance, while

Hawthorne utilizes a similar technique in juxtaposing the Pyncheon and Maule claims to *The House of the Seven Gables*.

### **Aristocracy, Meritocracy, and Property Law**

In *Rob Roy* and *The House of the Seven Gables*, Scott and Hawthorne both utilize three key property law concepts in the English and American legal systems, which are important to first understand before developing the different visions of property law that they explore.<sup>5</sup> They are the concepts of the fee simple, the life estate, and the reversionary interest. The fee simple, which was settled in English law by the end of the thirteenth century (Holdsworth 52), is essentially a perpetual and unlimited title in a parcel of land; “it will last as long as the person entitled to it for the time being dies leaving an heir, and therefore it may last for ever in the sense that it may never pass to the Crown so long as there is an heir” (Burn and Cartwright 32-33). The holder of a fee simple can sell off pieces of the land as he or she chooses, build upon as he or she wishes, and can will the property to the heir or heiress of choice. In contrast to the fee simple, a life estate is merely a license to live in a particular house or on a certain parcel of land for the duration of a person’s life (or, in the case of an estate *pur autre vie*, during that person’s life and the life of another specified person) (Burn and Cartwright 33). This interest does not give the person the right to sell off any of the property or make anything other than very minor modifications to the property, and the life estate cannot be sold or given to another and cannot be passed down by will: when the estate holder dies, so too does the life estate. Any property with a life estate is usually owned in fee simple by another person; in *The House of the Seven Gables*, for example, Jaffrey Pyncheon holds the fee simple rights to

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<sup>5</sup> I will discuss the differences in the Scottish feudal system of property law during my discussion of *The Bride of Lammermoor* later in this chapter.

the home, but the same will that bestows that right upon him also grants Hepzibah a life estate in the property. This returning qualification is known as a reversionary interest, in which title either automatically goes back to a different party if certain conditions are met (i.e. the expiration of a life estate) or can revert at the discretion of that party.<sup>6</sup>

These three concepts are useful in exploring the competing theories of land ownership with which Hawthorne and Scott grapple in their novels. The first is the traditional theory of charter that originated with the monarchy but was also a characteristic of post-revolution colonization of the New World. This theory initially depended on the belief that the monarch was divinely invested with ownership of land, and the king or queen alone could grant its use to another; as Pollock and Maitland describe, “The person whom we may call the owner, the person who has the right to use and abuse the land, to cultivate it or leave it uncultivated, to keep all others off it, holds the land of the King either immediately or mediately” (232). The monarch could therefore grant land as a reward for services rendered to the throne, and the grant was generally construed as a grant in fee simple – the recipient had absolute control over the land and it passed to his heirs – but the monarchy retained a reversionary interest: the land could be taken if the recipient died without an heir (*escheat proper defectum sanguinis*) or if the recipient committed a felony (*escheat proper delictum tenetis*) (Burn and Cartwright 19). The largest sweeping reversion in English history occurred after the Norman Conquest, when William the Conqueror divided the lands formerly held by the

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<sup>6</sup> This situation indicates a schism between legal ownership and equitable ownership, or a distinction between rights *in rem* (i.e. in the land itself) and *in personam* (i.e. the personal right of occupancy) in both English law (Harpum 105) and Scots law (Guthrie 9-10), one that will become noteworthy in the discussion of *The House of the Seven Gables* later in the chapter.

Saxons amongst his Norman supporters, leaving England's properties in the hands of six percent of its population (Delderfield 26). The same theory extended to land in the New World, as James I chartered the Plymouth and London Companies to colonize Massachusetts and Virginia respectively. Even as the influence of the monarchy waned in favor of Parliament, the same theory extended to grants of land in the Old World and the New: Parliament acted in the name of the monarch, who claimed title to all the land in the New World and ignored any contrary claims made by Native Americans.

Given the influence of monarchical reversionary rights in a feudal system of land tenure, the most common mechanism for conveying land across parties was through marriage, which was governed under the auspices of canon law by the thirteenth century (Simpson 9). Despite marriage's overtly religious purpose, marital ceremonies and terms were inextricably related to the language and form of contract law; the term wed, for instance, stems from the meaning "to bind with a contract" (Pollock and Maitland 185-87). A.G. Harmon claims that mercantile interactions reflected contract marriages and provided the means of binding individuals in social intercourse, as "the marriage contract resembled the everyday commercial contract between English citizens" (9). Property could be kept in the hands of these united families through entail, which, as Scottish jurist Lord Kames famously described, froze property "in an endless succession" (155). Entail embodied the traditional theory of property law by allowing the will of long-deceased ancestors to control the future of property despite the circumstances or merits – or lack thereof – of their living descendants.

The origins of a contrasting, republican theory are credited to John Locke's *Second Treatise on Government* (1690), which asserted, "Though the earth and all

inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property” (12-13). Locke suggests here that the mingling of rights *in personam* and *in rem*, achieved through labored improvement to the land, trump those that merely accrue from maintained legal title to a parcel of real property. The legal evolution of Locke’s philosophical assignation of personal property, which holds that the land belongs to the person who would make the best use of it, is both rooted in the older legal concept of alienability – which holds that, absent covenants to the contrary, property may be sold at the holder’s wish (Megarry and Wade 883) rather than held simply by virtue of ancestry or title – and adverse possession, which, when an unoccupied piece of land is continuously occupied by a non-owning party, “does not just bar the right of action for its recovery,” but also “extinguishes the landowner’s title” (Megarry and Wade 1410). Original ownership – or even the grant of title – is irrelevant: through the doctrine of adverse possession, a squatter can even occupy an owned property, and if he or she maintains continuous possession for a fixed number of years<sup>7</sup> and demonstrates, the squatter’s interest is deemed to be superior to the interest of the title holder.

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<sup>7</sup> The exact number of years is determined by statute, as limitation (“the extinction of stale claims and obsolete titles”) is “unknown to the common law” (Megarry and Wade 1409). The exact occupancy requirements for the Pyncheon lands in *The House of the Seven Gables* would probably have been twenty years under the Land Act 1623 or the Real Property Limitation Act 1833.

While these two theories are not in absolute opposition – the power of alienation is important to maintain ancestral estates as well as to form new ones – they do differ in how they value the land and how the owner of the land maintains title to it. The first, or traditional, theory assumes that some higher power – a monarch, an executive, or a legislative body – maintains a permanent reversionary interest that can be invoked at any time. Maintaining title is therefore inextricably linked with maintaining good relations with the granting body, even if that grant is detrimental to the value of the land. The second theory – the republican theory – is uninterested in the relation between parties as long as whoever holds the land can maximize its value and defend it against would-be adverse possessors. If a holder cannot keep others who would maximize the land’s value from doing so, this doctrine dictates that the land no longer belongs to that person.

**“Blank Osbaldistone”: Disinheritance and Feudal Property Alliance in *Rob Roy***

In her exploration of literary memory in the *Waverley* novels, Catherine Jones asserts, “the dominant form of literary memory in *Redgauntlet* is legal memory, which I define as the textual embodiment of the law in the *Waverley* novels” (108). She then links Scott’s “map of the law” with the rhetorical strategy of Hume’s lectures: “it is one that is fully aware of the history of the law, of the links between the present state of the law and its feudal fabric. Scott would have viewed the law in Enlightenment terms as historically specific, yet culturally evolving” (109). Ian Ward has connected the legal ramifications of the *Waverley* novels to Scott’s vision of the social viability of the Acts of Union, identifying *Waverley* as initially optimistic and *The Bride of Lammermoor* as the “tragic climax” of “the wholesale decay of the social, and thus political, constitution” (“Scott,” 209). Ward’s study focuses on the inability of English and Scottish political

processes to peacefully coexist, as well as the problematic tendencies of English laws to usurp Scottish precedent despite the express terms of the Acts of Union, a point made particularly potently about the English infanticide statute in *Heart of Midlothian* (“Scott,” 201-2). In addition to the problems of reconciliation due to perceptions of English usurpation, however, it is worth noting that Scott does not let Scotland’s legal institutions and traditions off the hook either. Rather, both the seemingly painless resolution of Frank’s inheritance in *Rob Roy* and the pessimism that many critics identify as underlying *The Bride of Lammermoor*’s tragic conclusion are equally attributable to the tension between the extant feudalism of Scottish property law, the theoretically compatible but practically usurping influence of English property law, and the uncomfortable coexistence of both systems in post-Act of Union Scotland.

Generational conflict over the inheritance of real property and tension between rural aristocracy and cosmopolitan mercantilism serves as the stimulating conflict in Walter Scott’s *Rob Roy*. As Natasha Tessone has argued in her examination of property law and *The Antiquary*, rather than property serving as the force that “grounds the nation” in times of financial fluctuation, Scott “was keenly aware of the troubling fact that property and inheritance are fundamentally volatile” (151). In *Rob Roy*, this volatility is directly featured as an internal rather than an external conflict, as dueling branches of the Osbaldistone family exemplify both traditional and republican views of property ownership.

Unlike the entailed estates of Scott’s *The Antiquary* or John Galt’s *The Entail*, inheritances in the Osbaldistone family are dictated by the whims of living patriarchs rather than the legal machinations of long-dead ancestors. William Osbaldistone, father to

the narrator Frank, describes his disinheritance to his son: “I was at your age when my father turned me out of doors, and settled my legal inheritance on my younger brother... I know not, and I care not, if my fox-hunting brother is alive” (24). William asserts that his disinheritance was due to his single-minded nature and pursuit of business, while his “fox-hunting brother” (24), Sir Hildebrand, usurped his place by fulfilling the aristocratic pursuits that satisfied their father but that William considered “equally trivial and profane” (21). The effect of being snubbed is reversed, however, by William’s industry and Hildebrand’s sloth: the disinherited older brother becomes a thriving London merchant, while his titled supplanter allows Osbaldistone Hall to sink into decay. This nicely mirrors the central conflict of the novel between Frank, who has been disinherited by William for not joining his trade, and his cousin Rashleigh, who seeks to both inherit Osbaldistone Hall from his father and take over William’s firm. Importantly, Rashleigh, although ultimately villainous, does not seek either of these inheritances due to legal succession or grant: he is the youngest of his father’s sons, but “has somehow or other got the entire management of all the others; and every one is sensible of the subjection, though they cannot shake it off” (68). His merit also enables him to fill Frank’s position at William’s firm, “because, as Rashleigh alone possessed more arithmetic than was necessary to calculate the odds on a fighting-cock, none but he could be supposed qualified for the situation” (68).

The difference between these two separate acts of disinheritance is worth noting. The first, William’s rejection from Osbaldistone Hall, is a traditional disinheritance made possible by the Statute of Wills (1540), which allowed landowners to countermand primogeniture by disinheriting the eldest child in favor of an alternative successor. While,

in this light, William's disinheritance seems to be a relatively progressive act, as his father is capable of choosing his own heir rather than relying on feudal notions of inheritance, William recasts it as the triumph of his "fox-hunting," lazy, and aristocratic brother. The second disinheritance, William's removal of Frank from his firm, is represented legally as a byproduct of Frank's failure in a meritocratic mercantile enterprise: William is not trying to give Frank any interest in heritable real property, but a personal interest and role in his firm based on his financial capability, although Frank, contentedly "imagining myself certain of a large succession in future" (13), mingles the language of inheritance law and mercantile business when he describes his father's reasons for needing him as an heir to his firm:

If my father were suddenly summoned from life, what would become of the world of schemes which he had formed, unless his son were moulded into a commercial Hercules, fit to sustain the weight when relinquished by the falling Atlas? and what would become of that son himself, if, a stranger to business of this description, he found himself at once involved in the labyrinth of mercantile concerns, without the clew of knowledge necessary for his extraction? (13).

Importantly, William's disinheritance of Frank is a mutual rejection precipitated first by Frank's "eloquent and detailed apology for declining a place in the firm" (15), to which William replies "what I have *is* my own, if labour in getting, and care in augmenting, can make a right of property, and no drone shall feed on my honeycomb" (24). William explicitly invokes Locke's description of personal property rights in his subsequent justification for removing Frank from his place. The honeycomb metaphor here, however, seems to suggest an aristocratic rather than a meritocratic reading: while a "drone" bee is

capable of the kind of work William claims to want Frank to perform, he indicates his desire for a successor who can carry on in a generational sense, telling Frank that one of his nephews “shall be my son if you cross me farther in this matter” (24). William’s and Frank’s respective losses at the hands of their fathers mirror each other: William is disinherited from Osbaldistone Hall seemingly because of his merits, while Frank seemingly lacks the ability or desire to function in commercial enterprise and is reverted to the ancestral home.

Scott resolves his novel with the twice-disinherited Frank, who lost Osbaldistone Hall due to his father’s disinheritance and lost his place in his father’s firm due to his own failings, as the inheritor of both his ancestral home and his father’s business. Frank inherits the former due primarily to Scott’s use of English intestate succession, as all of Hildebrand Osbaldistone’s sons other than Rashleigh die quickly during the battles of the Jacobite Revolution with convenient timing. Despite his dismissal of legal plots in *Rob Roy* as incidental, David Marshall does credit Scott’s use of inheritance law for his decision “to polish off the five sons in one page – all, as he later admitted, by violent and unexpected modes of death. It was the lawyer in Scott that insisted on the succession thus being opened in proper form to the hero, and the author on this occasion seems to have regarded inhumanity as a lesser sin than illegality” (101). This clears the way for the “woebegone and self-abandoning” Sir Hildebrand, who dies “beaten down to the very earth by his family calamities,” to disinherit Rashleigh and bestow “the wreck of the property” of his aristocratic estate upon “Frank, the natural heir” (467-68). This inheritance is not immediately secured, as Rashleigh attempts to engage in litigation to challenge his father’s will, litigation which is only thwarted by William’s leveraging of

assets to encumber the property with mortgages (469). The aristocratic estate is therefore dependent upon the mercantile estate, as Frank cannot validate his place as Hildebrand's lawful successor without William's financial acumen.

Frank is therefore doubly indebted to his father, both for the realization of his place as Hildebrand's heir and for his prodigal return to his father's financial firm. Frank's narration makes it clear that his conduct during his adventures once again endeared him to his father, but only because of his intent, not because of any actual achievement on his part. William is still the only party capable of putting the firm on solid financial ground again: "By his extensive resources, with funds enlarged, and credit fortified, by eminent success in his continental speculation, he easily accomplished what perhaps his absence alone rendered difficult" (457). Similarly, when Frank volunteers for military duty, it is William who purchases his commission. The structure of this narrative reunion is encapsulated as the subordination of Frank's former artistic dreams to his father's desires – "he was sensible that, in joining him with heart and hand in his commercial labors, I had sacrificed my own inclinations" (500) – without overdue concern for Frank's actual capacity for autonomous action as his father's heir. Instead, Frank is the beneficiary of his father's largesse and the fortuitous removal of his rivals. As Andrew Lincoln notes, the lack of concrete detail in Frank's fortuitous re-inheritance fits Scott's narrative strategy, as "Frank is the immediate beneficiary of some of the events he describes. The relationship between self-interest and judgment is exposed with startling clarity in his hasty tying-up of the narrative. For while the haste may reflect Scott's own impatience with the story, it seems revealingly appropriate to the narrator – since the older Frank passes lightly over events in which the legitimacy of his own claim

to the Osbaldistone estate is at issue” (49). The fate of Osbaldistone Hall itself is similarly opaque. Frank seems to approach his ancestral home and new manor from two different viewpoints. On the one hand, he has worked extremely hard (at his father’s urging) to validate his status as Hildebrand’s heir, and his father’s last words in the text proudly, if somewhat bemusedly, refer to him as “Lord of Osbaldistone Manor” (500). His second inheritance of the firm of Osbaldistone and Tresham, however, rather convincingly indicates that he does not maintain the aristocratic “fox-hunting” lifestyle of the previous lord of the manor, choosing his father’s profession over his uncle’s lifestyle. Whether he maintains the home as a country residence (possibly to enable his frequent visits to Scotland (501)), or whether he lets out the property entirely, remains unaddressed and unanswered.

William Osbaldistone, however, is not the only parental figure to whom Frank is indebted for the realization of his fortune. Sir Hildebrand’s will is not safe until Rashleigh is disposed of by Rob Roy. From this perspective, Scott’s employment of the Scottish Rob Roy serves to emphasize Scotland’s marginality compared with the cosmopolitan world inhabited by the London Osbaldistones. Frank, who Ian Duncan has meticulously demonstrated is quintessentially a product of London mercantilism, is temporarily foiled by his neglected Northumbrian cousin Rashleigh’s superior employment of English law and demonstration of superior financial acumen. In addition to his father’s financial resources, Frank is forced to rely on Rob Roy as an outlaw outside both English and Scots law, whose combination of force and trickery subverts the very institutions that will ultimately grant Frank his place as heir of his father’s business and Osbaldistone Hall. Rob Roy appears in the text as a seemingly omnipresent guardian

to save Frank in every hour of extremity: although the novel is titled after a Scottish character, Rob Roy is instead relegated to serving as a supporting player in an English property dispute, and the very real property usurpations of the Highland clearances are relatively unaddressed backdrops for this seemingly minor English familial drama. In her forthcoming *Gendering Walter Scott*, Caroline Jackson-Houlston argues that Helen MacGregor, rather than Rob, is the primary representation of Scottish oppression and rebellion in the novel: “Helen can act as a mouthpiece for protest at the oppression of Scotland that allows Scott to retain a role of lovable rogue for the eponymous hero whose name was chosen for the novel with an eye to its commercial appeal” (8). While this may, as David Hewitt indicates, suggest a joint “marginalization” (95) between Highlanders and Northumbrians, Andrew Lincoln suggests that Rob Roy’s relegation to supporting status is deliberate: “The figure of the highland outlaw is used to establish an alternative perspective on the historical condition from which the narrator speaks” (51). While the unscrupulous use of mercantile power jointly impacts English and Scottish characters throughout the novel, Lincoln indicates that Frank “himself makes no such judgment. He continually judges the personal failings of his past self, his youthful rashness and filial disobedience, but his more general views – those that relate to the wider meaning of his story – remain unrevised” (49).

Bruce Beiderwell notes that Frank’s ability to function in English finance is ultimately due to his salvation at the hands of these Scottish characters, as through Helen’s drowning of Morris and Rob’s stabbing of Rashleigh, “(both of which he earnestly repudiates), Frank is delivered from the threat of false accusations, relieved of further challenges to his rights of inheritance, and rewarded with the woman he loves”

(47). As Beiderwell further suggests, “the critical implications of this process are disturbing; primitive acts of revenge provide an unsettling parallel to sophisticated acts of business. Lawless revenge and lawful business (both of which reward and burden the hero of civil society) give rise to the historical tensions in *Rob Roy*” (48). This may reinforce Matthew Wickman’s assertion that “virtually every critic agrees...that *Rob Roy* is not *Waverley*; and, if in that earlier novel Scott presents a contrast between Highland and British, primitive and modern, then Scott’s later narrative transforms the Highlands from a region and a chapter in history into the normative condition of modernity” (55).

Frank’s marriage to Diana Vernon, however, potentially complicates the novel’s closing “normative condition of modernity,” which may in fact be stunted by the novel’s reinforcement of an anti-modern feudalism. While Frank’s retrospective narration is charged with highly affectionate language towards the late Diana, their marriage also solidifies his position as Sir Hildebrand’s heir. Diana’s father, the Catholic Sir Frederick Vernon, and Sir Hildebrand had negotiated what Rashleigh describes as “a certain family-contract” to unite their families. This contract was dependent on a papal dispensation, the language of which is particularly relevant: “A dispensation has been obtained from Rome to Diana Vernon to marry *Blank* Osbaldistone, Esq., son of Sir Hildebrand Osbaldistone, of Osbaldistone Hall, Bart., and so forth; and it only remains to pitch upon the happy man, whose name shall fill the gap in the manuscript” (141). Crucially, neither Sir Hildebrand nor Sir Frederick modify the dispensation or contract before their deaths. Like the skimmed details mentioned earlier relating to his inheritance, Frank omits any mention of the dispensation in his brief description of his engagement: “How I sped in my wooing, Will Tresham, I need not tell you” (500). He does, however,

mention his father's surprise at his marrying a Roman Catholic, indicating that the papal dispensation would still need to be valid in order for Diana to maintain her religious affiliation. This suggests that Frank was able to insert his own name to "fill the gap in the manuscript," allowing the papal dispensation to stand as yet another witness to his place as Hildebrand's heir. Although Diana may not bring any material property to their union<sup>8</sup>, the marriage's satisfaction of the contractual requirement to wed the heir of the Vernon estate to "*Blank Osbaldistone*," no matter how based on mutual affection, serves as legal confirmation of Frank's status as Sir Hildebrand's heir. While David Hewitt interprets the marriage to indicate that Frank "married Die Vernon and in so doing he symbolically united traditions; but he has lost her; similarly the old-fashioned ways of the people of Northumberland and the Trossachs have been destroyed by modernity" (96), I would suggest that this marriage might, instead, be seen to reinforce feudal notions of marriage under the auspices of a modern, sympathetic marriage. Feudal tradition here does not necessarily "destroy" modernity, but it does suggest an overriding influence rather than a break from "the old-fashioned ways of the people of Northumberland and the Trossachs." In this light, Frank and Diana's marriage is not a romantic discarding of social convention in the name of love and sympathy, but serves to reinforce property claims and perpetuate dynastic succession.

**"Founded, Perhaps, Rather in Equity than in Law": Legal Dissonance in *The Bride of Lammermoor***

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<sup>8</sup> Although *Rob Roy* is silent on the fate of Sir Frederick's property, as he fled to France as a fugitive from the Crown, leaving his daughter in the custody of a convent, it is likely that his property would have been confiscated under the laws I will discuss during my analysis of *The Bride of Lammermoor*.

If Scott subtly explores the tension between feudalism and modernity in *Rob Roy*, his examination is much more direct in *The Bride of Lammermoor*. In this section of the chapter, I will explore the implications of three elements of Scottish law that Scott incorporates in the events of *The Bride of Lammermoor*: the judicial ramifications of legislative union between Scotland and England, the Scottish feudal system of property law, and the doctrine of primogeniture.

In his alterations to the Magnum Opus edition of *The Bride of Lammermoor*, Scott moves the date of the narrative from before to after the Acts of Union. While this alteration has important political and historical implications, Jane Millgate suggests that Scott's legal training was equally responsible for the revision:

the change seems to have been prompted not by any dissatisfaction on Scott's part with the appropriateness of the original dating itself but by subsequent doubts on a purely technical matter – that of the exact status of appeals to the Scottish parliament against decisions of the Court of Session in the period between the accession of William and Mary and the coming into force of the Act of Union” (172).

Although Scott labored carefully to alter<sup>9</sup> the second manuscript to avoid anachronistic legal references, the importance of those changes should not obscure the unchanging nature of Scott's use of the underlying Scottish feudal system of property law, which remains unaltered between versions. As Ian Ward suggests, “in many ways, the precise date matters less than the wider sense of historical context. It is a story set on the

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<sup>9</sup> As Fiona Robertson notes in her introduction to *The Bride of Lammermoor*, despite his careful attention to the procedural appeals to the House of Lords, Scott “did not revise the many comments which still suggest a pre-Union dating, and the historical scheme of the novel is correspondingly inconsistent” (xxxv).

borderlines of feudalism and modernism. The forces of decay existed apart from the actual Union; 1707 is more a symbol of the sanctification of decay” (“Scott,” 205-06).

Scott’s textual changes to the manuscript in the *Magnum Opus* edition focus primarily on procedure rather than outcome. Most of these changes, which feature prominently in the discussion between Sir William Ashton and the Marquis of Atholl’s agent, deal with the appellate process by which Edgar Ravenswood could challenge his late father’s disinheritance. The agent in the *Magnum Opus* edition asserts “that some of the most important points which had been decided in his favour against the house of Ravenswood, were liable, under the Treaty of Union, to be reviewed by the British House of Peers, a court of equity of which the Lord Keeper felt an instinctive dread. This course came instead of an appeal to the old Scottish parliament, or, as it was technically termed, ‘a protestation for remeid in law’” (162). Scott’s original omits the House of Peers from the equation, reading instead “were liable to be reviewed by the Estates of the Kingdom, *i.e.* by the Scottish Parliament, under an appeal by the party injured, or, as it was technically termed, ‘a protestation for remeid of law’” (2:24). These alterations continue throughout this conversation into Ashton’s subsequent discourse with Edgar, whose original “it is in the Estates of the nation, in the supreme Court of Parliament, that we must parley together. The belted lords and knights of Scotland, her ancient peers and baronage, must decide...” (2:44) becomes “it is in the House of British Peers, whose honour must be equal to their rank – it is in the court of last resort that we must parley together” (172).

While Scott’s revisions alter the bodies who will dictate the outcome of legal proceedings, the prevailing laws themselves used to arbitrate the dispute between

Ravenswood and Ashton are still those formulated centuries before the events of *The Bride of Lammermoor*, and are largely unaffected by contrary English legal precedent or legislative statute. Ravenswood's and Ashton's suit would have been adjudicated under Scottish laws<sup>10</sup> that were still in force when Scott wrote *The Bride of Lammermoor*. Even if Edgar Ravenswood had appealed his father's disinheritance to the House of Lords, the peers legally would have been obligated to decide his case using these acts rather than their English counterparts. As a practical consideration, however, whether they would have actually done so may have been an entirely different issue.

This distinction between procedural technicality and practical enforcement is important when considering Scott's use of the term equity. Although references to *courts* of equity are only present in the Magnum Opus edition, Scott uses the *term* equity in a different context across both versions of the text. Courts of equity were a distinctly English phenomenon with no analogue in Scotland; they originated from the monarch's prerogative to overrule legal proceedings as a matter of clemency and developed into a separate court system (the Court of Chancery) based on equitable, rather than legal, principles (Harpum 103-04). As noted earlier, English law makes a distinction between legal (*in rem*) and equitable (*in personam*) rights in property. In contrast, the meaning of the concept of equity in Scottish jurisprudence is relatively simple; according to the Law Society of Scotland, "The principles of natural justice and fairness have always formed a source of Scots Law and have been applied by the courts without distinction from the law. Therefore Scots Law has avoided the highly complex juristic construct of Equity

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<sup>10</sup> In addition to the feudal inheritance laws discussed herein, the dispute probably would have fallen under the Leases (Scotland) Act 1449, the Registration (Scotland) Act 1617, and the Prescription (Scotland) Act 1617.

which applies in England” (13). Bryan Clark indicates that Scottish “equity in practice represents a mechanism by which harsher facets of the law can be softened. So, for example, Scottish courts developed equitable court remedies to be granted to parties in deserving cases” (43). What I want to note here is that, while Scott changes the appellate jurisdiction to a *court* of equity, his narration is concerned with the *concept* of equity both before and after the alterations.

While this may appear relatively straightforward, Scott’s references to equity are actually more complex. Although he appears to use the term in its basic definitive role, he deliberately juxtaposes equity against law and the Scots legal system, describing the decision in Ravenswood’s lost suit as “founded, perhaps, rather in equity than in law” (31). Note the inherent ambiguity here: in this quote in both editions, as well as later references during the discussion between Ashton and Edgar at Wolf’s Crag (162-66), Scott’s narration depicts equity as something distinct from law rather than as a guiding principle in how the law should be applied. Although this suit is clearly Scottish, carried out by Scottish courts under Scots law, this seems to invoke the English distinction between equity and law in a conceptual rather than jurisprudential sense, indicating an indictment of both the legality of Ashton’s prevailing suit against Ravenswood and of the underlying structure of the legal system in general.

English law post-Act of Union, therefore, almost becomes a red herring of blameworthiness; the real roots of the problem are in the political intrigue of Scott’s Scottish characters and the underlying Scottish feudal laws on which their decisions are based. While Scott may be critiquing the new formulation that allows Scottish decisions to be reviewed by unelected English peers, focusing solely on this neglects the uniform

critique across the original and revised editions. Rather, Scott's distinction between the concept of equity and courts of equity seems intended to address the underlying flaws in Scotland's feudal system of property law.

According to James Reed, Scott populates *The Bride of Lammermoor* with characters that "turn out to be the inhabitants of an obsolete, illusory realm of feudal vassalage" (122). Scotland's feudal system of property law was quite different, both in Scott's day and in the historical period of *The Bride of Lammermoor*, from that of England, where Cromwell abolished feudalism, and the rest of Continental Europe (Reid 5). In contrast to the more volatile development of its southern neighbor's system of property law, as Robin Callander observes, "a prominent feature of Scotland's estate structure has been its relative constancy throughout its historical development. This dates back to the introduction of feudalism into Scotland during the 11th and 12th centuries" (2). Kenneth Reid suggests that feudalism endured in Scotland for a multitude of reasons, including "lack of legislative opportunity," "a certain pride in the distinctiveness of Scots law," and "practical sense" (5).

Callander further explains the mechanisms used in Scottish feudalism to assign ownership rights to land:

The title or authority by which landowners own their land is derived from the highest authority in Scotland. In legal theory this is God, but in practice it is the Crown, who is the ultimate owner of all of Scotland and is known as the Paramount Superior. Any landowner is thus a vassal of the Crown. The essential character of Scotland's feudal tenure is that this need not be a direct relationship. Anyone, when he disposes of land he owns, can maintain an interest in that land.

He, as a vassal to the Crown, is then the superior of the new owner, who becomes his vassal. There is no limit in Scots law to the number of times this process, known as subinfeudation, can be repeated over the same piece of ground” (6). This feudal relationship meant that, prior to 2004,<sup>11</sup> the Scottish feudal system of property law was a system of land tenure rather than a system of land ownership” (Guthrie 6). Scottish feudal law shaped more than the relationships governing the estates of nobility and their tenant farmers; as Andy Wightman has noted, feudal principles were a key part of the legal strategy behind the redevelopment of what became Edinburgh’s New Town in the eighteenth and nineteenth centuries (20-22), and continued to be used by volume house builders until the abolition of feudal tenure in 2004 (Guthrie 6-7). These strategies helped give feudalism a new “legal lease on life,” allowing it to survive until the abolition of feudal tenure in 2004.

Feudalism requires rights and responsibilities of all parties in the equation: landowning nobles like the Ravenswoods and Ashtons have duties both to their superiors (the monarch) and their tenants. This first portion – the requirement of loyalty to the Crown, as well as the right of the monarch through subinfeudation to reclaim right to the property – is relevant to the senior Ravenswood’s forfeiture of title and land due to his involvement in the Jacobite Rebellion. Under feudal tenure, “the commission by the tenant of a felony caused the land to escheat, that is to pass to the lord of whom it was held” (Burn and Cartwright 19), in the category known as escheat *propter delictum*

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<sup>11</sup> While feudal tenure technically endured until the Abolition of Feudal Tenure (Scotland) Act 2000 (all provisions of which came into full effect on 28 November 2004), Reid notes that many elements of feudal tenure were done away with during the previous three centuries: “Personal services were abolished in 1715, prohibitions on alienation of the feu in 1746, prohibitions on subinfeudation and superiors’ monopolies in respect of law agents in 1874, and feudal casualties in 1914” (12).

*tenetis*. This reinforced the feudal paradigm that the true ownership of the land – as well as a permanent reversionary interest – belonged to the royal personage of the monarch.

Scott's narration in both versions of the tale makes it clear that Ravenswood is the victim of political intrigue rather than royal discontent, as he compares the relationship between feudal lord and noble to that described in the Book of Judges: ““In those days there was no king in Israel”” (28). Interestingly, the problems accompanying the absence of monarchical oversight are compared to “those which afflict the tenants of an Irish estate, the property of an absentee” (28). Here, as Fiona Robertson suggests, Scott alludes to Maria Edgeworth's popularization of the dynamics of Ireland as a conquered nation managed by the corrupt agents of absentee landlords. The reduction of the monarchy to that of an absentee landlord, and of the prevailing powers in Scottish parliament to their self-interested agents, reinforces the claim that “the administration of justice, in particular, was infected by the most gross partiality” (28). While the senior Ravenswood has breached his feudal duty through his Jacobite intrigues, the narration seems to suggest that the monarchy and its agents are equally delinquent. Ravenswood's dispossession is essentially a form of both symbolic and legal disinheritance, even if it is brought about through political intrigue rather than strict adherence to feudal obligation.

Similarly, however, Ravenswood's decline is emblematic of the failure of his family to fulfill their obligations to their tenants. Caleb Balderstone's attempts to extract provisions from the villagers of Wolf's Crag, while generally comic in nature, illustrate the breakdown of the feudal relationship between noble and commoner. When his efforts are stymied by the “awful form of Davie Dingwall, a sly, dry, hard-fisted, shrewd country attorney” (138), Caleb's reaction invokes the frustrated privileges of his feudal lord

without acknowledging his breach of feudal duty: “If Caleb could have concentrated all the lightnings of aristocracy in his eye, to have struck dead this contemner of allegiance and privilege, he would have launched them at his head, without respect to the consequences” (139). Regina Hewitt has noted how the figure of the sextant reminds Ravenswood of his family’s failure: “The loss of the property itself was an irresponsible act in the sextant’s view because the lord treated it as his own to hold or waste as he wished instead of treating it as a community resource entrusted to him. Listening to the sextant’s tirade, Ravenswood has an epiphany about the public responsibility attached to private privilege. The narrator described him as ‘conscience-struck’ by the realization that the penalties of extravagance extend far beyond the prodigal’s own sufferings” (114). Rather than suffering the loss of their feudal liege lords, the fall from grace of the Ravenswood family means that “the villagers of Wolf-hope prosper” (Burwick 270).

If the Ravenswood dynasty fails due to its inability to cope with the demands of feudal law, the Ashton dynasty similarly falters due to a different legal branch of the same corrupt body: the doctrine of primogeniture. Originally an English<sup>12</sup> concept imposed on Scotland by Edward I in 1290, primogeniture gave full succession rights to the eldest male child, forbidding the division of heritable property (i.e. land) amongst children or the succession of female children. Primogeniture was heavily criticized during the Enlightenment by thinkers such as Adam Smith, but remained in full effect until the Titles to Land Consolidation Act (Scotland) 1868, which allowed landowners to bequeath land upon an heir or heirs of their choosing, and the Succession (Scotland) Act 1964,

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<sup>12</sup> The English Parliament ended primogeniture in England with the Statute of Wills (1540), which allowed landholders to determine inheritance without defaulting to birth order.

which abolished primogeniture in cases of intestate succession in favor of dividing assets amongst heirs. Interestingly, one of the foremost legal voices in favor of primogeniture was James Dalrymple, Lord Stair, whose familial dynasty and memory forms the basis of the events of *The Bride of Lammermoor*. In his 1681 *Institutions of the Laws of Scotland* (which Scott's opening narration in *The Bride of Lammermoor* labels "an admirable work" even though "the labours of his powerful mind were unhappily exercised on a subject so limited as Scottish jurisprudence" (1)), Stair defended primogeniture as a necessary mechanism for "the preservation of the memory and dignity of families, which by frequent divisions of the inheritance would become despicable or forgotten" (22).

This defense of primogeniture as a necessary means to maintain familial memory, dignity, and property as an intact body is highly ironic in light of the events of Scott's narration. Scott is careful to distinguish between the historical figure of James Dalrymple and his fictional analogue William Ashton, as his opening narration describes James Dalrymple as the genesis of a line "which has produced, within the space of two centuries, as many men of talent, civil and military, and of literary, political, and professional eminence, as any house in Scotland" (1). The fictional William Ashton, on the other hand, outlives his oldest two children, and his youngest son dies without an heir (348), leaving only Lady Ashton's "splendid marble monument" that "records her name, titles, and virtues" even as her line withers and dies (348). While the marriage of Lucy to Edgar could have potentially secured the necessary male heir to carry on both title and property, Lady Ashton preferred her elder son to "the more plebian blood" of her daughter (41). Rather than marry Lucy to someone who can produce the future heir to the family title, Lady Ashton instead seeks to pawn her off and avoid giving her a place in

the dynastic line, commenting, “It was not so, however, that our house was raised, nor is it that it can be fortified and augmented” (41). This lack of a wedding is anomalous in the *Waverley* Novels; as Frederick Burwick has noted, “The lovers in the *Waverley* novels are typically, like Shakespeare’s *Romeo and Juliet*, the son and daughter of opposing camps, and their love points the way to a possible resolution and synthesis. Indeed, in many of the novels a happy union does take place, although it most emphatically does not in *The Bride of Lammermoor*” (264). Lady Ashton’s refusal to allow such a wedding to take place, while grounded in the aristocratic feudal desire to ensure her family’s dominance over the properties of the Ravenswood family, means that her “splendid marble monument” fulfills her ambitious goal of presiding over the property, but serves as the physical incarnation of the lost memory of her extinct line.

**“The Old Pyncheon Come Again”: Marital Resolution and Intestate Succession in *The House of the Seven Gables***

Hawthorne’s *The House of the Seven Gables* deals with similar themes of dynastic ambition over property. Holly Jackson has argued that “In true republican fashion, *The House of the Seven Gables* rails against the dangers of inheritance... However, in its ultimate protection and restoration of the family and its material legacy, perhaps no other work so clearly captures the persistent American ambivalence on this issue, the impulse to preserve ancestral status despite its antidemocratic implications” (274). While my analysis of Scott’s work may suggest that this ambivalence is not a uniquely American phenomenon, Jackson’s placement of *The House of the Seven Gables* as ambivalent is persuasive. Hawthorne’s novel, I argue, both mirrors *Rob Roy*’s apparent triumph of the meritocratic theory of property by allowing Phoebe and Matthew to take possession of

the house as “deserving” parties and, both through the original triumph of Colonel Pyncheon and the undermining of his descendant Jaffrey, reflects *The Bride of Lammermoor*’s skepticism of both meritocracy and aristocracy.

Hawthorne’s story begins with conflicting theories of property law – which Brook Thomas ties to Morton Horwitz’s tripartite categorization of the development of antebellum American property law (33) – and the initial triumph of aristocracy over merit. This conflict is both important in its own right as a tale of dueling families and as a microcosm of a larger struggle over theories of property law; as Walter Benn Michaels asserts, “Hawthorne does not, however, represent the struggle between Pyncheons and Maules merely as a conflict between the more and less powerful or even in any simple way as a conflict over a piece of land. He presents it instead as a conflict between two different modes of economic activity” (*Romance*, 159). Notions of aristocracy in Hawthorne’s text, however, have transformed by the time of the novel’s major action into capitalism: “Maule embodies a Lockean legitimation of property by labor whereas the Pyncheons, with their pretensions to nobility, are something like old-world aristocrats. Except that the pre-Revolutionary fear of a titled aristocracy had, during the Jackson years, been replaced by the fear of a ‘money aristocracy,’ and Judge Pyncheon is certainly more capitalist than nobleman” (Michaels, *Romance*, 160). While much of Hawthorne’s jurisprudential critique is, as William P. MacNeil has argued, “predictive” of “*the principal American school of thought, and that nation’s one truly original and enduring contribution to global jurisprudence, legal realism*” (102), it is also immediately grounded in the immediate conflict between the property rights of the meritorious laborer and the aristocracy, whether titled or moneyed.

In the introduction to the story, set around the Salem Witch Trials of 1692, Matthew Maule has built “a hut, shaggy with thatch” (10) on a desirable plot of land, which he has maintained for “thirty or forty years” (10). His claim to the land is interrupted by the arrival of Colonel Pyncheon, described as “a prominent and powerful personage, who asserted plausible claims to the proprietorship of this, and a large adjacent tract of land, on the strength of a grant from the legislature” (10). While Hawthorne’s assignment of power over land grants to the legislature may appear to be democratic in nature, it should be remembered that this initial dispute takes place nearly a hundred years prior to the American Revolution, leaving control of land dispensation – in theory if not in practice – in the control of the crown as delegated to colonial authorities. Pyncheon’s ability to curry favor in the New World is therefore at least indirectly tied to the power structures of the Old World and the politicking utilized by Sir William Ashton in *The Bride of Lammermoor*. While the novel does not elaborate on this point, it is possible that the future political machinations of Colonel Pyncheon’s descendant Jaffrey have their original roots in this transaction, suggesting that the same skill set utilized by Judge Pyncheon in American democracy worked equally well under English aristocracy. Hawthorne’s narrative is obstreperously silent on the mechanics of Colonel Pyncheon’s methods, stating simply of both the legislative grant and the resulting legal dispute that “No written record of this dispute is known to be in existence. Our acquaintance with the whole subject is derived chiefly from tradition. It would be bold, therefore, and possibly unjust, to venture a decisive opinion as to its merits; although it appears to have been at least a matter of doubt, whether Colonel Pyncheon’s claim were not unduly stretched, in order to make it cover the small metes and bounds of Matthew Maule” (10-11).

Maule, for one, believes that Pyncheon's claim was "unduly stretched," and "for several years, he succeeded in protecting the acre or two of earth which, with his own toil, he had hewn out of the primeval forest, to be his garden-ground and homestead" (10). Nina Baym notes the tension between the two theories encapsulated in Maule's and Pyncheon's struggle over the land:

Maule was not only the *first* owner of the land, but also the one who turned it from wild nature to garden ground and homestead with the labor of his own hands. Though he takes the land away from nature, Maule demonstrates his kinship with her by his creative powers; this is why the fountain which makes this plot of ground so valuable is rightly given his name. As a conduit for natural, creative vitality, Maule is vehicle for the life force itself. In contrast to this, Pyncheon is a man of writs, deeds, and documents, one who arrives on the scene only with the expansion of the village boundaries, and who depends on institutions to achieve his goals and protect his achievements. He claims the land not from nature but the legislature, and his invariable recourse in all moments of crisis is the law" (63-64).

Pyncheon's version of the "law," or at least the law of conveyance with its resulting reversionary interest, prevails over Maule's attempt to maintain possession of the land that he has cultivated. The cause of Pyncheon's final triumph, however, is not found in the lost record of a judge's ruling in their legal dispute, but in an entirely different legal proceeding: Maule's execution for witchcraft. Much like Pyncheon's acquisition of the land grant, Maule's execution is shrouded in the suggestion – although, importantly, not the outright confirmation – of injustice and bias: the frenzied participation by Salem's

clerical and legal leaders, “the wisest, calmest, holiest persons of their day,” is offered as proof “that the influential classes, and those who take upon themselves to be leaders of the people, are fully liable to all the passionate error that has ever characterized the maddest mob” (10). These displays of “passionate error” may, the narrative seems to suggest, have allowed Pyncheon’s self-interested denunciations and “invidious acrimony” (10) to unjustly condemn Maule to the gallows. Once again, Hawthorne’s documentary evidence for any suggestion of impropriety cannot be found in legal memoranda or court reports, but only in the tradition and memory of the town of Salem.

Hawthorne has therefore effectively created two legal histories by which the dispute over The House of the Seven Gables has been memorialized. The first, Pyncheon’s argument that he held the land by right of royal charter confirmed by judicial affirmation, is set forth as the official account. Although it bears the stamp of legitimacy, there is no documentary trail to support the claims made by later heirs of the Pyncheon family; the veracity of the account and legitimacy of the underlying claim is instead “derived chiefly from tradition.” The second version of the account, which paints Maule as the victim of Pyncheon’s political machinations and an unjust legal system, is similarly bereft of evidence. This lack of resolution is a partial explanation for the Sisyphean renewal of the conflict between Pyncheons and Maules in subsequent generations.

The Colonel’s grandson Gervayse Pyncheon, for example, asserts the finality of his progenitor’s version of the conflict’s legal resolution to Maule’s son Matthew. Despite the lack of a documentary trail, this Pyncheon couches his rationale in legally decisive language: “I am well aware, that my grandfather was compelled to resort to a suit at law, in order to establish his claim to the foundation-site of this edifice. We will

not, if you please, renew the discussion. The matter was settled at the time, and by the competent authorities – equitably, it is to be presumed – and, at all events, irrevocably” (170). Like Scott, Hawthorne makes use of the concept of equity in a potentially legally provocative way. As this episode occurs before the American Revolution (when a later descendant preserved the house from confiscation by repenting of his Tory leanings (23)), if Hawthorne was intending the term to be used in its legal sense rather than to merely reiterate the dispute over the fairness of the Pyncheon suit and Maule trial, Gervayse is invoking the jurisdiction of the deciding authorities rather than the process of their deliberations.

Given the history of equity in Massachusetts, this is a particularly interesting possibility. As Phyllis Maloney Johnson has documented, Charles I granted judicial powers as well as legislative powers to the General Court (state legislature), which oversaw suits in law and equity. Two separate attempts to create courts of chancery were made in 1685 and 1692, but both failed: the High Court of Chancery had dissolved the colonial charter in the first instance, requiring a new royal charter, and the Privy Council invalidated the second attempt “on the grounds that only the Crown could establish a court of chancery in the province” (8-9). The timing here is noteworthy, as the 1692 attempt to create a Court of Chancery coincided with the witch trials in Salem. The witch trials were conducted by a Court of Oyer and Terminer, which was created by Governor William Phipps and led by Lieutenant Governor William Stoughton. The court only lasted for five months, as Governor Phipps terminated it on the grounds that it had abused the use of “spectral evidence” to convict defendants, and “the witch trials of Salem, Massachusetts, were declared unlawful by the general court” (Mauck 360). The parallel

between the flawed and disbanded Court of Oyer and Terminer and the cancelled Court of Chancery suggests a potentially larger critique of justice under Massachusetts's mixed legislative and judicial system of governance.

The Massachusetts General Court's fulfillment of both legislative and judicial responsibilities, particularly as they relate to the issue of equity, is one problem with Brook Thomas's otherwise cogent analysis of *The House of the Seven Gables*. Thomas reads Hawthorne's story alongside essays in the *Democratic Review* to suggest that both questioned the judiciary's willingness to "give up its regulatory control to state legislatures," which "seemed to them a threat to the republic" (50). While the cases Thomas cites<sup>13</sup> support this contention, they deal with either the New Hampshire judiciary or the United States Supreme Court, entities with which Hawthorne is unconcerned in *The House of the Seven Gables*. Hawthorne's invocation of equity during a period of jurisdictional upheaval is relevant, I would suggest, to Thomas's larger point that "Hawthorne does not stop with exposing the false foundations of the present system of government. He goes on to question the possibility that any human product can intentionally be made to coincide with natural law. Thus Hawthorne suggests that the democratic alternative is subject to the same criticism it levels against the conservative system represented by Judge Pyncheon" (45). Indeed, Judge Pyncheon's legal and political career, although it comes much later than the period of colonial controversy over the place of equity, echoes the same intermingling of legislative and judicial function as those invoked by Hawthorne's description of the General Court, suggesting a similar indictment in Hawthorne's contemporary Massachusetts about the dual abuse of

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<sup>13</sup> *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

legislative and judicial prerogatives, not (as Thomas describes) solely the usurpation of the legislature over the judiciary.

Unlike many other former colonies, Massachusetts did not maintain a separate system of equity or create one after independence. Massachusetts legislators instead folded the elements of equity into the Supreme Judicial Court, and “by 1836, the Supreme Judicial Court of Massachusetts possessed the four distinctive features of English equity – discovery, multiparty practice, equitable remedy, and particular branches of substantive law such as trust. The court could sit in common law or in equity, depending on the nature of the cause before the court” (Maloney Johnson 5-6). While this does indicate a progressive separation of legislative and judicial responsibility from the initial Pyncheon-Maule dispute to the novel’s present conflict between Jaffrey Pyncheon and his relatives, the Supreme Judicial Court’s dual power indicates the existence of the same dynamic. Despite its heritage of English common law, Massachusetts resembles Walter Scott’s depiction of equity in Scottish law – a set of guiding principles rather than a separate administrative system – more than it resembles England or its fellow former colonies in the new republic. Maule and his descendants, therefore, may have valid grounds for their complaint that the Pyncheons have intentionally subverted legal process by a lack of equity, procedurally as well as jurisdictionally.

This younger Maule, at any rate, is unimpressed with the justice provided by the law and Gervayse Pyncheon’s assertion of equity, resulting in the formerly sweet fountain becoming bitter and the enacting of Maule’s curse upon the Pyncheon family. As Gillian Brown argues, this curse, with its accompanying physical maladies and moral turpitude, indicates that “family inheritance, an endowment both economic and moral,

links persons to real property as well as to physical properties and characteristics, placing persons under the power of their legacies” (107). Although the Pyncheon family suffers the ill effects of the curse, their ownership of the land remains intact through both continued possession and political negotiation, including the aforementioned willingness of the American Revolution-era Pyncheon to abandon his Tory leanings in order to preserve ownership of the home. This action is potentially illuminating, as, in order to keep their home, the Pyncheons have literally cut their ties to the legal apparatus that granted it to them in the first place. Hawthorne’s narrative quickly glides over this episode, however, suggesting that the infrastructure of the post-Revolution state of Massachusetts has inherited the same legal and equitable subservience to grants of title as the pre-Revolution colony. Despite the political winds seemingly shifting away from the preservation of English aristocracy in favor of a more meritocratic form of governance, the Pyncheon’s aristocratic land grant has maintained its dominance over Maule’s homestead – at least at the House of the Seven Gables.

In a karmic twist, however, the Pyncheons are unable to duplicate their success in a far greater field of conquest. Shortly after the sudden and unexpected death of his father, Colonel Pyncheon’s son receives “a claim, through an Indian deed, confirmed by a subsequent grant of the General court, to a vast, and as yet unexplored and unmeasured tract of eastern lands” (20). This new parcel of land ostensibly has two legitimate, although problematic, authoritative claims: the “Indian deed” and the confirming grant by the General court. Hawthorne’s passing mention of the “Indian deed” does not receive a great deal of attention, and Hawthorne may have intended it only as a non-essential aside; as Allan Emery has discussed in great detail, Hawthorne’s tale is primarily focused on

three aspects of Salem's history – John Endicott's supplanting of Roger Conant's "band of 'old planters,'" the persecution of Quakers, and the Salem witch trials (132-33) – without paying any overt notice to pre-European settlement or the nature of the English settlers' land acquisition from its native inhabitants. This is not an indictment of Hawthorne as ignorant of or unconcerned with racial concerns; as Brenda Wineapple argues, critics who "flay Hawthorne for *not* mentioning race in his stories or novels" neglect the frequent examples where he "writes about racial issues directly, forcefully, or unpleasantly" (189). Neill Matheson has described the absence of the Indian deed as "a disjuncture, the failure to establish continuity with the past" (17), while Brook Thomas suggests that "Hawthorne imagines a more radical Jacksonian narrative by implying that the Indian deed would not be honored by white settlers of the land" (72), rendering it ineffectual. This "psychoanalytic lack of law" (MacNeil 101), I would argue, is also suggestive of the missing references to original Native American ownership and subjection in the novel. In a theme that will bear repeating throughout my analysis of *The House of the Seven Gables*, the Native American presence is perhaps more provocative by its absence and ability to, regardless of probable force or coercion, relinquish its hold on the plot of land.

Hawthorne utilizes similar ambiguity in his invocation of the General Court, which, as a legislative body rather than a judicial court (although, as previously discussed, it shares the functions of both), "confirms" the Indian deed through a "subsequent grant." Hawthorne describes Waldo County, Maine, the site of the new land, as "more extensive than many a dukedom, or even a reigning prince's territory, on European soil" (20). Colonel Pyncheon is dead, however, and "[h]is son lacked not

merely the father's eminent position, but the talent and force of character to achieve it; he could therefore effect nothing by dint of political interest; and the bare justice or legality of the claim was not so apparent...[s]ome connecting link had slipped out of the evidence" (20). The General Court's dual legal and political duties are echoed in the younger Pyncheon's dual inefficacy, as he is unable to claim the land either "by dint of political interest" or through demonstrating "the bare justice of legality of the claim." The succeeding Pyncheons are therefore unable to either prove their claim in court or to settle the land in person, and possession of the land instead passes to other, unnamed parties.

Interestingly, Hawthorne makes use of both theories of land ownership in the repopulation and settlement of Waldo County by these new interlopers, as "the territory was partly re-granted to more favored individuals, and partly cleared and occupied by actual settlers" (20). Unlike the conflict between Maule and Pyncheon, these two unnamed but discrete parties – one claiming land by virtue of charter, the other by virtue of labor – are apparently able to come to a mutually beneficial approach to dividing up the land. Hawthorne does not elaborate on the nature of this accord other than to contrast the harmonious resolution of the arrangement with the Pyncheon family's futile pretense of original claim: "These last, if they ever heard of the Pyncheon title, would have laughed at the idea of any man's asserting a right – on the strength of mouldy parchments, signed with the faded autographs of governors and legislators, long dead and forgotten – to the lands which they or their fathers had wrestled from the wild hand of Nature, by their own sturdy toil" (20-21). While Hawthorne does not elaborate on this, it is also worth noting that Maine's adverse possession laws, which disqualified possessors with honest but mistaken ideas of their property ownership, formerly required the adverse

possessor to engage in “bad faith,”<sup>14</sup> or to have the intent to knowingly take possession of land belonging to someone else; as Lee Anne Fennell suggests, “the Maine’s rule focus on intent illustrates one of several distinctions that the good faith/bad faith dichotomy obscures” (1039). These interlopers onto Pyncheon’s deeded property are therefore, at least in Maine, potentially legally justified under either theory of property law, as both their labor and the state’s own legal structure justify their taking of the property at the expense of the aristocratic Pyncheons.

The fruitlessness of this quixotic endeavor is amplified given the unity of the epitomizing heads of the Pyncheon household, the original Colonel Pyncheon and his doppelgänger, the modern Judge Jaffrey Pyncheon. The physical and moral similarity between the two leads Hepzibah to murmur that “nobody would doubt that it was the old Pyncheon come again!” (56). In establishing this unity of character across different generations, Hawthorne seemingly evokes Washington Irving’s parallel tavern portraits in “Rip Van Winkle,” where the hapless Rip

recognized on the sign, however, the ruby face of King George, under which he had smoked many a peaceful pipe; but even this was singularly changed. The red coat was changed for one of blue and buff, a sword was held in the hand instead of a scepter, the head was decorated with a cocked hat, and underneath was painted in large characters, GENERAL WASHINGTON (24).

Despite the intervening generations and changes in political reality, the latter self-proclaimed head of the Pyncheon clan still clings to the same theory of land ownership as his predecessor, believing that a long vanished charter confirmed by a replaced legislative

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<sup>14</sup> See, e.g., *Preble v. Maine Cent. R. Co.*, 27 A. 149 (Me. 1893).

body will still have power to liberate the Maine properties from their “squatting” inhabitants. In reality, however, the long-lost deed that forms the root of the conflict between Jaffrey and Clifford is not even worth the superannuated paper on which it is written. The location of the deed, which is hidden behind Colonel Pyncheon’s portrait, ironically underscores Hepzibah’s muttered fear that “it was the old Pyncheon come again.” Jaffrey dies mere feet away from his ancestor’s portrait, whose penetrating gaze cannot protect him against death even while it effectively conceals the object of his desire.

Like his ancestor Colonel Pyncheon, Hawthorne depicts Jaffrey as an unapologetically political creature with “a natural tendency towards office” (25). On the eve of his death, Pyncheon is supposed to be at a dinner with the “little knot of subtle schemers [who] will control the Convention, and, through it, dictate to the party,” which will culminate in him “ris[ing] from the table, virtually governor of the glorious old State! Governor Pyncheon of Massachusetts!” (237-38). In order to reach his level of political status, Pyncheon requires power in property, which he derives from his manipulation of inheritance law. Jaffrey has his cousin Clifford disinherited by framing him for the murder of their uncle, which leads to both criminal punishment and the loss of his inheritance: Clifford is convicted and sentenced to a thirty year prison sentence, and loses his inheritance under the operation of the slayer rule, which, in common law, “prohibits killers from benefiting from the act of killing” (Blasco 969). While Hepzibah is able to maintain her claim to “a life-estate by the will of the old bachelor” (25) in the House of the Seven Gables, Jaffrey takes over his cousin’s position as owner of the property in fee simple. While Jaffrey’s honorific title of “Judge” may seemingly describe

a neutral arbiter who remains outside the tempting snares of partisan politics and, from his lofty position at the bench, dispassionately dispenses justice rather than twisting the law to suit his own ends, his manipulation of inheritance law and ambitious involvement in Massachusetts electoral politics refute those pretensions. Jaffrey's seemingly benign aristocratic visage is, Hawthorne suggests, a façade, as an "ill-natured" neutral observer "would probably suspect, that the smile on the gentleman's face was a good deal akin to the shine on his boots, and that each must have cost him and his boot-black, respectively, a good deal of hard labor to bring out and preserve them" (104). The judge's position on the Massachusetts social ladder is not solely the product of his inheritance from Colonel Pyncheon. While Jaffrey clings to the "Indian deed" to justify his aristocratic claim to the land in Waldo County, his willingness to dirty his hands like the "boot-black" suggests a meritocratic approach to his affairs in his native state, as he has gradually worked his way up the state's political ladder from "a judicial situation in some inferior court" to serving "a part of two terms in Congress, besides making a considerable figure in both branches of the state legislature" (25). In this way, Jaffrey particularly resembles his politically connected ancestor, who leveraged those political connections to secure The House of the Seven Gables from the unwilling Matthew Maule.

In his death, Jaffrey's stubborn persistence appears to indict his ancestor's aristocratic view of property rather than serve as vindication. Hawthorne's dual depictions of Jaffrey as a marble palace concealing "a corpse, half-decayed, and still decaying, and diffusing its death-scent all through the palace!" (199) and a "pool of stagnant water, foul with many impurities, and perhaps tinged with blood" (200) indict both Jaffrey's personal defects and his inherited lack of "equity" from his ancestor. The

ancestral Colonel Pyncheon's refusal to acknowledge the equitable justice of Matthew Maule's claim has, like the corpse in Hawthorne's analogy, lingered until its "death-scent" strikes down his descendant. Pyncheon's ignominious death highlights his incapacity for what Joseph Flibbert calls "affective response to individuals... Well before the fly that has 'smelt out' the judge begins to crawl across his face to his 'wide-open eyes,' we sense that the man who has lost 'that dog-day smile of elaborate benevolence' sees nothing and feels nothing" (127).

Jaffrey's death is seemingly responsible for the triumphant resolution of the novel, in which Phoebe inherits Jaffrey's property and, by marrying Holgrave, ritually and symbolically ends the conflict between the Maule and Pyncheon families through marriage. The marriage seemingly forever subordinates Jaffrey and Colonel Pyncheon, as the two declare their love for each other while they are debating what to do about the discovery of Jaffrey's corpse: while MacNeil notes that Holgrave's "timing may be seriously off" (126), Phoebe's declaration that "this secret takes away my breath!" (264) allows her to simultaneously recoil from the horror of discovering her uncle's body and externally demonstrate her reciprocal love for Holgrave. Parsing the meaning of their union and Phoebe's inheritance, however, has not proved simple, as numerous critics disagree about Hawthorne's meaning in resolving the conflict through this marriage.

Samuel Coale Chase takes an optimistic view of the resolution, describing Hawthorne's treatment of this marriage as siding "with the triumph of love literally emerging from the shadow of death in the corpse of Judge Jaffrey Pyncheon... Holgrave, a Maule, and Phoebe, a Pyncheon, eradicate the curse's power by marrying" (28). Millicent Bell, however, suggests "there may be more pessimism and irony than we have

supposed” in the formerly radical Holgrave’s seeming transformation into aristocratic co-landowner: “The descendant of a carpenter/house builder moves into another old house, albeit in the unpolluted country, though he had once believed that every generation should destroy the structures elevated by its predecessors and begin anew. The curse of inherited wealth is not to be forgotten in the transfer from the House of the Seven Gables to this alternate Pyncheon property” (18). Michael T. Gilmore is similarly skeptical of Holgrave’s seeming renunciation of his radicalism and inherited mesmeric powers, as “not even departure from the family mansion can quell the ‘legendary.’ After the lovers drive off into the sunset, the Pyncheon elm is heard to whisper ‘unintelligible prophecies.’ As in *The Scarlet Letter*, the oracular voice hovers unconciliated over the novel’s final pages, and conservatism triumphs without getting the better of verbal agency” (36). Nina Baym argues that this indicates a wholesale transformation: “His social radicalism has gone; he is prepared to abandon his art and take over the routines of a country squire. Instead of finding himself in the darkened parlor, he loses himself, for when he leaves he is prepared to follow in Pyncheon’s path. He takes the name of Maule, but the form of Pyncheon” (Baym 70). Keiko Arai, meanwhile, argues instead that “Holgrave overcomes the ‘temptation’ to exert a mesmeric/sexual power over ‘Phoebe’s yet free and virgin spirit;’ instead of seeing her as a woman to possess, he values her ‘individuality’ and in the end submits himself to her agency” (51). Arai sees this as an unarguably legal move, as “Holgrave, who has been a reformist with ‘a law of his own,’ is converted to Phoebe’s ameliorative perspective. As a result, the paternal Pyncheon’s ‘weaknesses and defects, the bad passions, the mean tendencies, and the moral diseases,’ which are ‘handed down from one generation to another, by a far surer process of

transmission than human law,' are replaced by the 'healthy' nature of Phoebe, who values moral and human law" (53). Importantly, Arai further asserts, 'the custodian of law in the novel accordingly shifts from Judge Pyncheon, who seems on the verge of being elected as a governor, to Phoebe" (53).

One point that seems to have been neglected in these various analyses of the novel's resolution is the legal nature of Phoebe's position as Jaffrey's heir: while she may well be a deserving character, her actual inheritance of the Pyncheon property is accidental rather than planned. Critics such as Chase, Arai, and Gillian Brown imbue Phoebe with active power in her role as heir; Brown, for example, asserts that "Hawthorne envisions in Phoebe a solution to the problems of inheritance" by linking her capture of title with nineteenth century "reforms in married women's property laws, which gave women greater control over their inheritances from their fathers and husbands" (108). However, as the only child of the deceased "last and youngest Pyncheon" (25), Phoebe is instead the heir of last resort: neither Clifford (due to his disinheritance by operation of the slayer rule) nor Hepzibah (who was already granted a life-estate by the will) can inherit, and the widowed Jaffrey has no direct heir as his only son, in a plot device notably similar to Scott's disposal of the Osbaldistone sons in *Rob Roy*, preceded his father in death "just at the point of embarkation for his native land" (271). While Brown's connection between Phoebe's inheritance and expanded property rights for women is an intriguing possibility, the circumstances of the Pyncheon inheritance allow her to inherit only after all other possible heirs are eliminated.

Phoebe's position as accidental aristocratic heir rather than meritorious successor is augmented by Hawthorne's description of Jaffrey's intestate heirs inheriting his

possessions. After describing the death of Jaffrey's son, Hawthorne writes, "By this misfortune, Clifford became rich; so did Hepzibah; so did our little village-maiden, and through her, that sworn foe of wealth and all manner of conservatism – the wild reformer – Holgrave!" (271). Hawthorne's language here mirrors the rules of intestacy under post-Revolutionary War common law in America, which abolished primogeniture and granted property, in descending order, to the decedent's spouse, children, parents, siblings, and, only if none of the preceding are alive or able to inherit, to the children of siblings (Katz 10-11). Hawthorne's wording here follows intestate provisions by placing Clifford in the prime position as the male sibling, then Hepzibah as the female sibling. Phoebe, as their niece, follows after, as does Holgrave as her husband. Phoebe's placement in this sentence is probably not due to her gender; as Marylynn Salmon has demonstrated, although women in colonial Massachusetts did not receive "the usual protection for their estates" that they would have under English law due to Puritan alterations (6), by the 1820s a "limited support for women's separate estates" had evolved (139). Even though Clifford and Hepzibah have already clearly been eliminated – and the novel clearly proceeds to grant Phoebe the inheritance – Hawthorne's description in this sentence conforms to intestate rules rather than acknowledging Clifford's disinheritance and Hepzibah's alternative provision. This order seems to suggest that Phoebe's inheritance, in a sense, comes through Clifford and Hepzibah – if not for their inability to serve as heir, she would have received nothing. Although Holgrave does not overtly renounce his earlier castigation of intestate succession as an antiquated relic – "if he die intestate, it is distributed in accordance with the notions of men much longer dead than he" (160) – he seems to have no qualms about acquiring the Pyncheon property through it.

While Phoebe is technically a Pyncheon through her father's line, and is therefore legally entitled to the property, Arai argues that, due to her strong sense of economy and housecraft inherited from her mother and her willingness to embody "plebian" aspects of "feminine, domestic quality," "Phoebe's position as a Pyncheon must be seen as fairly ambiguous" (42). While this may be true of Phoebe the character, Phoebe the heiress is defined not by her "'plebian' aspects of 'feminine, domestic quality,'" but solely by her blood. Even if Hawthorne has set Phoebe up as a model of meritocracy when contrasted with her weaker aristocratic relatives, he seemingly subverts this characterization by basing her final success solely on her lineage. As Brown acknowledges, Hawthorne's "alliance of woman with property does not necessarily bespeak an endorsement of women's property rights" (110). The marriage alliance between old familial enemies and resulting joining of ancient property claims does not fully endorse either mode of property theory but, instead, reflects uncertainty about the methodology behind its seemingly happy resolution.

### **Conclusion**

These three texts, I have argued, embody the conflict between meritorious and aristocratic theories of inheritance and property succession. In both *Rob Roy* and *The House of the Seven Gables*, the shortcomings of feudalism are ostensibly magnified by the triumph of the more meritorious systems, but these narratives are complicated by the resolution arising through what are legally if not factually feudalistic marriage dynastic alliances: although the heirs of the Pyncheon and Maule families and Die and Frank appear to have genuine affection and sympathy, their unions nevertheless symbolize familial alliance leading to the securing of property. *The Bride of Lammermoor*, on the

other hand, has the marriage and both families fail, due both to the individual shortcomings of the central characters and the antiquated systemic failure of Scottish property law to achieve equitable outcomes. In *Rob Roy* and *The House of the Seven Gables*, disinheritance and a break from the feudalistic system of primogeniture ultimately works to accomplish the same goals that those systems would have sought to uphold: those who should have inherited ultimately prove themselves worthy despite (or because of) their time outside of their roles as heirs, and the marriages reinforce this capitalist fulfillment of the feudal ideal while pulling at its underpinnings. *The Bride of Lammermoor* takes a much more nihilistic stance, tugging both individual worth and the possibility of marital success down under the weight of decrepit feudal law.

Scott's and Hawthorne's textual ambivalence regarding the merits of these theories of property law amplify their commentary, through these fictional texts, on the fundamental fiction of the legal concept of land ownership. All three properties – Osbaldistone Hall, the Ravenswood estate, and the House of the Seven Gables – seem to “own” their inhabitants as much as their owners or would-be-owners can claim to own them. The privileges associated with the rights of legal title to these properties instead become anchors tying their characters to inevitable conflicts over parcels and dirt. As noted, the successfully wedded protagonists of *Rob Roy* and *The House of the Seven Gables* are partially successful due to their ability to break away from the parcels of land under consideration: Frank and Die Vernon live in London and leave Osbaldistone Hall to an unspecified role in their property portfolio, while Phoebe and Holgrave are last seen “jauntily climbing into the late judge's ‘handsome, dark-green barouche’ and ready to

depart forever that emblem of the ‘inescapable past,’ *so-called* – the House of the Seven Gables – for a brighter (and certainly more prosperous) tomorrow” (MacNeil 100).

Part of the romance of Hawthorne’s novel, Walter Benn Michaels argues, is this legal fiction of property ownership: “The romance, then, is to be imagined as a kind of property, or rather as a relation to property. Where the novel may be said to touch the real by expropriating it and so violating someone’s ‘private rights,’ the romance asserts a property right that does not threaten and so should not be threatened by the property rights of others. The romance, to put it another way, is the text of clear and unobstructed title” (*Romance*, 157). Frank and Phoebe largely succeed, I would argue, because of their ability to recognize this fiction for what it is: they acknowledge the largely happy accident of their acquisition of the properties and proceed unencumbered with the rest of their lives, discarding or minimizing the parcels of land as needed. Jaffrey Pyncheon, Rashleigh Osbaldistone, and the unhappy characters of *The Bride of Lammermoor* – Edgar Ravenswood and the entire Ashton family – on the other hand, die precisely because of their inability to recognize this fiction for what it is. This does not necessarily suggest any heightened asceticism on the part of the successful protagonists: while Phoebe and Frank may be presented as morally superior than their defeated opponents, that does not reflect either side’s appraisal of real property. If anything, the defeated parties in these stories evince a more sentimental, or, in Michaels’s term, “romantic” attachment to the land. Despite their differences, and despite the entangled mesh between aristocratic and meritocratic English, Scottish, and American version of property law, all three of these narratives essentially cast the very idea of property ownership itself as a legal fiction.

## Chapter Three

“Why *Will* You Say That I Am Mad?”:

Insanity and Rationality in “The Tell-Tale Heart” and “Strange Letter of a Lunatic”

In *Poetics of Character*, Susan Manning references James Hogg’s short story “Strange Letter of a Lunatic” (1830) as a possible source in her analysis of Edgar Allan Poe’s “William Wilson” (1839), suggesting that, in “a literary-historical approach” to Poe’s story, “some form of connection – it might be influence – between ‘William Wilson’ and the doubling tales of *Blackwood’s* and *Fraser’s Magazine*, of which Poe was a keen reader, seems evident” (154). Manning ultimately moves away from Hogg and ideas of influence in her character-driven analysis of “William Wilson,” as “what kind of relationship may be reliably inferred between these doubling protagonists and German Romantic *Doppelgänger* remain opaque...we need to look for other ways in which comparison may deliver distinction” (154). To further Manning’s project of looking beyond influence, I would suggest that there is an important confluence between Hogg’s short story and another story by Poe, “The Tell-Tale Heart,” written in 1841. As I will argue in this chapter, both of these stories make use of tensions in the Scottish and American versions of the insanity defense between culpability and mental illness, indicating the potential “legal fiction” of the defense’s underlying purpose. Despite its different formulation in Scottish and American law, the purported rationale for the insanity defense is to find alternatives to criminal punishment for those who, due to mental illness, lack the necessary mental capacity to form *mens rea* and be criminally culpable. The narrators of these stories, Poe’s unnamed murderer and Hogg’s James Beatman, may complicate this rationale by demonstrating both possible slippage in this

negation – requisite culpability may still exist despite their mental illnesses – and a relative preference for criminal punishment over “treatment” for mental illness.

### **Crime, Mental Illness, and Punishment**

Initial views on the nature of criminality after the American Revolution suggested a partial schism between the Old and New World. While English and Scottish legal authorities largely held to the European view that criminals were naturally deviant and required strict legal structures to bridle their inherent evil urges, post-colonial Americans initially ascribed British oppression as the cause of crime, with the throwing off of imperial rule as its necessary cure. Thomas Eddy, John Adams, and William Bradford, among others, were greatly influenced by the views of Cesare Beccaria, who wrote in *Of Crime and Punishment* that “[t]he severity of punishment of itself emboldens men to commit the very wrongs it is supposed to prevent. They are driven to commit additional crimes to avoid the punishment for a single one” (Rothman 59-60). The cure seemed simple: eradicate strict laws, and those who had been criminals under the oppression of tyranny would conform to their newfound freedom accordingly. Despite the optimism of these early Americans, crime continued to exist; however, the fault was once again linked to external forces rather than internal nature. William H. Channing, a Unitarian minister and one of the founders of the New York Prison Association, reflected the prevailing view that criminality was rooted in the failure of family and community: “The first and most obvious cause is an evil organization derived from evil parents. Bad germs bear bad fruit...the spirit of mere adventure entangles the careless into a web of vile associations, from which there is no after escape” (30-31). Since fault belonged to society, society bore responsibility for its cure. Francis Lieber wrote that no expense should be spared to

reclaim lost souls: “society takes upon itself an awful responsibility, by exposing a criminal to such moral contagion, that, according to the necessary course of things, he cannot escape its effects” (Rothman 76).

In contrast to post-colonial American views on criminality as an external flaw, insanity was popularly viewed in both Britain and America as an *internal* failing. The stigmatization of the insane was rooted in a long tradition of assumption that the insane were cursed by God or afflicted by demonic possession (Rothman 109). As the nineteenth century progressed, some practitioners changed their attributive focus from the wrath of the divine to “the course of civilization” (112). Edward Jarvis, for example, declared that mental disorder was “a part of the price we pay for civilization. The causes of the one increase with the developments and results of the other” (112). Jarvis and Samuel Woolward further identified different social causes for mental illness among the rich and poor: for the middle and upper classes, the “exhausting and perplexing cares and toils of business” blended with “social life and fashion” were at fault; the poor, meanwhile, were cursed with “the struggle for subsistence, the constant threat of ill health, the domestic squabbles, and the temptation to vice” (124).

To many a layperson, however, insanity was still a sign of divine punishment and could be treated as such. As late as 1876, Henry Maudsley wrote that “[n]otwithstanding the great change which has taken place in opinion and practice with regard to mental disease within the last century, there are still persons who, if invited to visit a lunatic asylum, would look on the proposal in much the same light as a proposal to visit the Zoological Gardens and inspect the wild beasts” (1). This view of the insane, claimed Maudsley, came from medieval forms of Christianity that looked down on the body, even

in its normal state, with contempt (9). The additional degradation of the already corrupt physical corpus with mental disease was therefore “ascribed to a supernatural operation, divine or diabolical, as the case may be – was a real possession of the individual by some extrinsic superior power” (9). This stigma manifested itself in the treatment of the insane, as “[i]t was the natural result of such views of madness that men should treat him whom they believed to have a devil in him as they would have treated the devil could they have had the good fortune to lay hold of him” (10).

Maudsley’s depiction of the treatment of those suffering from mental illness is particularly problematic in the context of confinement in mental asylums, which generally falls outside of the protections of legal due process. Western judicial systems operate on the premise that criminal defendants are innocent until proven guilty; by the 1800s, structural mechanisms were in place to protect accused criminals against unfair imprisonment. The Sixth Amendment to the United States Constitution provides accused criminals with the right to a speedy and public trial by jury, the right to be informed of the nature and cause of the accusation, the right to confront opposing witnesses and provide witnesses to support the defense, and the right to assistance of legal counsel. Other protections include the right against self-incrimination, which originated in English common law in the seventeenth century and was codified as part of the Fifth Amendment in the United States, and the appeals process by which a conviction may be reviewed and overturned by a higher court. In addition to these constitutional protections, law enforcement itself was a new concept that struggled to find footing during the nineteenth century. The London Marine Police force, which is generally accepted as the world’s first modern police force, was formed in 1798 as a privately funded civilian enforcement

organization (Mason 10). Robert Peel believed that private efforts to enforce the law were inadequate, and, with the Metropolitan Police Act of 1829,<sup>15</sup> established Britain's first public police force. Similarly, American municipalities rarely had police departments until the late 1830s, and southern and rural areas had no police at all until the second half of the century (Friedman, *History*, 213). The role of the prosecutor was also in development: many jurisdictions only hired prosecuting attorneys on a part-time basis, while some cities – such as Philadelphia – depended on private prosecutors for much of the century (Friedman, *History*, 213). The relative novelty of an unprofessional jury system led to what Lawrence Friedman has called “slippage”<sup>16</sup> between indictment and conviction or conviction and sentence (*History*, 210-211). Juries could be quite unpredictable in their decisions; as Jack Williams notes, “the same jury which would change a murderer's indictment to manslaughter would condemn a common thief to the gallows without hesitation” (39). Acquittal was by no means a certainty, but an accused criminal also had relatively valid reason for optimism.

In contrast to the criminal justice system, asylum patients often had little or no procedural protections regarding their commitment or release. Prior to 1800, English common law<sup>17</sup> provided for the instant release of felons found not guilty by reason of insanity, although a judge who believed that a defendant was too dangerous to be released could order a separate civil commitment hearing (Moran 492). This changed

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<sup>15</sup> 10 Geo. 4, c.44.

<sup>16</sup> This “slippage” appears to vary by geography: from 1800-1860, only 30.9% of cases presented to South Carolina juries led to conviction, while Massachusetts convicted at a 65.8% clip (Friedman 212).

<sup>17</sup> Francis Aumann notes that American jurisprudence largely mirrored these English developments during the nineteenth century (159).

with the passage of the Criminal Lunatics Act of 1800<sup>18</sup>, in which Parliament, in order to provide for the incarceration of George III's would-be assassin James Hatfield, who had been acquitted by reason of insanity, declared that felons acquitted by reason of insanity were to be held indefinitely "in strict custody, in such place and in such manner as to the court shall seem fit, until His Majesty's pleasure shall be known." This principle also applied to those placed in asylums for non-criminal reasons with a minor change: rather than the Crown determining release, the doctors who supervised the facility dictated terms of admission and discharge. Two problems manifested themselves with this doctor-directed approach. First, while the purpose of asylums was ostensibly to treat the mentally ill, they were also run for profit. In one example, Thomas Eddy reported of the New York Hospital that "[t]he board of the patients would yield two hundred dollars per week, or ten thousand four hundred dollars per annum" (17). Hospital doctors and administrators therefore faced the temptation of keeping those who may have been cured to appease their governors' goals for profit margins. Second, while the goals of the moral treatment reform ostensibly focused on treating and rehabilitating the insane, many facilities continued to fill the old function of asylums by serving merely as a repository to relieve relatives from the burden of caring for the insane. Dr. Latham, then president of the College of Physicians of London, wrote that "[a]ll the madhouses under the present regime are more calculated for places of confinement, than as places of cure; the relations of the unfortunate people shut them up there, in order to keep them out of the way" (Spurzheim 158).

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<sup>18</sup> 39 & 40 Geo. 3, c. 94.

One particularly tragic post-moral reform case highlighted the inequity of asylum processing. Ignaz Semmelweis, a notable Austrian physician and the “father of disinfectant,” began to exhibit erratic behavior<sup>19</sup> in 1865. At the direction of Semmelweis’s family and house doctor, Ferdinand von Hebra invited him to “visit” one of his new asylums in Lazarettgasse. When Semmelweis attempted to leave following his inspection, he was informed that he was now a patient. His protests of sanity fell on deaf ears and, when he continued to protest, von Hebra’s guards beat him severely. Semmelweis languished in a damp cell in Lazarettgasse for two weeks. He was confined in a straitjacket; his treatment regimen included regular cold water dousing and laxatives. Two weeks after his incarceration, Semmelweis died from blood poisoning<sup>20</sup> as the result of his untreated wounds (Carter 76-78).

The concept of imprisonment as a punishment itself was also relatively new, and may have been seen as relatively beneficent compared to other punishments. Prior to the late eighteenth century, convicts not subject to execution for their crimes were usually punished through fines or corporal punishment; prison was generally reserved for suspects awaiting trial or for those in debt (Friedman, *History*, 219). The rise of the penitentiary movement in the early nineteenth century changed this by focusing on removing the criminal from evil societal influences as a means of reclamation. As Rothman writes, the penitentiary’s “design – external appearance, internal arrangement,

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<sup>19</sup> Semmelweis published a scathing series of “Open Letters” denouncing other obstetricians, began drinking heavily, and openly consorted with a prostitute to the consternation of his wife (Carter 74). Sherwin Nuland speculated that Semmelweis may have been in the early stages of Alzheimer’s (270), while Carter hypothesized that he may have suffered from third-stage syphilis (74).

<sup>20</sup> This is particularly tragic as Semmelweis devoted his medical career to stopping blood poisoning as a cause of infant mortality.

and daily routine – attempted to eliminate the specific influences that were breeding crime in the community, and to demonstrate the fundamentals of proper social organization” (79).

In response to an influx of prisoners under new sentencing guidelines, the Penitentiary Act of 1779<sup>21</sup> ordered that prisoners be given “labor of the hardest and most servile kind in which drudgery is chiefly required.” In response to the Act, wardens initially required their prisoners to perform actual work, but when the job shortages of the early nineteenth century sparked an outcry against prisoners taking jobs from working citizens, Sir William Cubitt devised a solution. Cubitt, an engineer by training, applied the principles of the windmill to create a treadmill for prisoners (Watson 251). These treadmills were designed to be functional – Cubitt’s treadmill at Coldbath Fields Prison in Clekenwell ground grain and pumped water – but their primary purpose was to help the prisoners work themselves into rehabilitation. Each prisoner’s shift on the treadmill lasted for eight hours, requiring an average of 11,000 feet per day. While even Oscar Wilde worked the treadmill during his incarceration at Reading Gaol in 1895, treadmills did not endure in American prisons, primarily because there was sufficient work to be done and an insufficient number of prisoners. Indeed, “[t]he idea of labor, even more than the calculations of profit and loss” (Rothman 104-05), was crucial to the very ideological underpinnings of the American penitentiary.

The American prison system developed two separate models – exemplified by and named after the Eastern State Penitentiary and the Auburn System – both of which would lead to American penitentiaries becoming “the object of national acclaim and

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<sup>21</sup> 19 Geo. 3, c. 74.

international study” (Rothman 94). The Eastern State Penitentiary of Pennsylvania, which was based on Jeremy Bentham’s model of the “Penitentiary House,” focused on providing comfortable space for individual reflection and reformation. Each prisoner was kept isolated in a relatively comfortable cell with a yard, prisoners could exercise in isolation, and each room had a glass skylight to allow sunlight (Rothman 94-95). In contrast, the Auburn system focused on rehabilitation through assimilation. Prisoners were dressed in identical striped uniforms, required to march in lockstep, and performed cooperative hard labor under a strict regime of silence (Rothman 97-99). While Rothman notes that prison conditions were generally worse in the western states and territories, most American prisons in the early- to mid-nineteenth century avoided the problems of overcrowding and prisoner abuse that arose later in the century and have continued to permeate United States prison culture to the present day.

The goals of the moral treatment reform method, which originated in the late eighteenth century, sought to apply a similar focus on humane reclamation and rehabilitation for the mentally ill. Early reformers such as Phillipe Pinel, Benjamin Rush, Jean-Baptiste and Marguerite Pussin, and the Quaker founders of the York Retreat sought to create a more conducive atmosphere for treatment. Too often, they judged, facilities for the mentally ill exacerbated rather than ameliorated their conditions. Joseph Spurzheim recorded that he had

seen madhouses near rivers, in marshy districts, where the atmosphere was constantly damp; sometimes near issues of sewers; or in the neighborhood of large hospitals, where thousands of patients were crowded together to infect the air; or where the galleries looked over large burial grounds, where internments

daily happened under the eyes of the most gloomy and melancholy patients... Commonly there were no means of warming the apartments; the cells sometimes resembled stables or dungeons; the water-closets often too near, and the smell offensive; no airing grounds at all, or small damp ones within the square buildings, and these still encumbered with rubbish; sometimes I have observed them exposed to the sun without any shelter, at other times surrounded with high walls, that no sunbeam could reach them (157-58).

In addition to the insufficient facilities, Spurzheim also documented the detrimental effect of the asylums' poor classification and organization of patients. Rather than grouping patients according to how they could best be treated, "the most furious and the most melancholy; the most imperious and the most fearful; the most vociferous and the most cheerful; the most villainous and most religious; clean and unclean; curable, convalescent, and incurable, are put together; all is chaos and confusion" (158).

Spurzheim further added, "I think we can add, the greatest number of madhouses are calculated to produce insanity, or at least to prevent the cure, rather than to promote it" (159).

Under the moral treatment initiative, reformers called for an increased emphasis on aesthetic beauty, clean air, and healthy walking. In proposing a new Boston retreat, George Parkman expressed his hope "that it may be considered a delightful temporary abode, affording superiour advantages for establishing health, or for diversion and respite from perplexing cares" (4). Many of these new facilities, such as the York Retreat in England and Parkman's Boston facility, flourished; however, as for-profit institutions, their patients were necessarily selected based on their ability to pay. This was not

necessarily a sign of greed – Parkman, for example, lamented that his “proposed Institution has not the means of extending its influence to objects of charity” (5) – but of perceived necessity. Segregation according to ability to pay was also the norm in traditional facilities that predated or ignored the moral treatment reform: “[i]f any separation of patients exist, it is made according to what can be paid for them” (Spurzheim 158).

One crucial shortcoming of the moral treatment method manifested itself in its inability to locate and house mentally ill members of the criminal population. As the ability to diagnose mental illness was still in its early stages of development, members of the prison population may have been excellent candidates for moral reform were kept in prison by criminal sentences. The designed reforming benefits of the penitentiary system did not accrue to these inmates either; interestingly, when the mentally ill were put in the same facilities as other prisoners, their keepers “attended rather to the complaints of the criminals, than of the unhappy lunatics. They had more compassion for the felons, or perhaps more fear of the justice which defends their cause, while the insane are abandoned, and given up in loathsome cells to the most arbitrary system of cruelty” (Spurzheim 159). Spurzheim further contrasted the treatment of the mentally ill and the merely criminal in terms that may have been a bit overly laudatory regarding the pristine nature of the penitentiary system, but which nevertheless demonstrate the stark distinction between how the two parties were treated within:

The thing which strikes me as the most shocking and abominable is, that the villains who have disturbed the peace of society live in palaces, have an airing, sometimes a play-ground, have often the whole building, even their place of

worship, warmed, fresh water in the yards, often cold and warm baths, and every thing comfortable and clean; while the poor insane, who want and deserve our pity, lie on straw and dirt, exposed to all vicissitudes of season and weather, reduced to the mercy of the turnkey, and less attended to than a horse or a wild beast (160).

As many medical professionals called for the need for moral treatment, they acknowledged that humane treatment of the mentally ill was, as yet, a minority approach. Phillipe Pinel decried “the system of treatment, which is yet adopted in too many hospitals, where the domestics and keepers are permitted to use any violence that the most wanton caprice, or the most sanguinary cruelty may dictate” (63-64). In 1814, Parkman criticized contemporary treatment options for the insane: “To detain maniacs in constant seclusion, and to load them with chains; to leave them defenseless, to the brutality of underlings, on pretence of danger, from their extravagances; to rule them with a rod of iron, as if to shorten their existence, already wretched; is a superintendence, more distinguished for its convenience, than for its humanity or its success” (6).

While the moral treatment reform ostensibly obliterated these treatments in favor of humane curative methods, many of the new treatments – such as those endured by Ignaz Semmelweis – were as debilitating as their predecessors. Treatments under the new regime included:

- Bleedings. Patients were “bled, vomited, purged and blistered, according to the season” (Spurzheim 156). Bleeding was rooted in the notion that mental illness was due to fluid imbalance. Benjamin Rush wrote that “[t]he natural remedy is depletion, and no mode of depleting is as effectual

or safe as blood-letting” (140). Patients were bled either with lancets, which actually cut through the skin into the vein or artery, or with a cupping glass or tow, which removed blood through heat transfer.

- Purgings were based on the same ideology of “fluid imbalance” as bleedings. The enema pump and the glyster were the common elements to induced purging.
- Immersion therapy. Spurzheim notes that, in one facility, “it was the custom to put all sorts of insane persons head foremost into a cask, nearly filled with water, to work their way up the best they could” (205-06).
- Electro-shock therapy. The Magneto-Electric Machine, constructed by the firm of Mawson and Swan, was one of the first efforts at using electricity to shock patients into mental stability. The manufacturer’s instructions direct therapists to “[c]onnect two metallic cords or wires with the sockets in the end of the box, and apply the handles connected with the other ends of the metallic cords or wires to any part of the person through which it is desirable to pass the current of Electricity. It is less unpleasant to the patient if wet sponges are placed in the ends of the handles, and these applied to the skin” (*Eastern State Hospital Exhibit*).
- Confinement. Seeking to avoid the customary methods of chaining the insane while still providing a humane form of restraint, the moral reformers sought alternative methods of temporarily confining patients during fits. Benjamin Rush developed a tranquilizer chair, which blocked the patient’s vision and hearing while confining him or her at the wrists,

ankles, and chest. Straitjackets were also used. A later development, and one that seemed to indicate that the moral treatment reform was not working as planned, was the Utica Crib of 1864, a narrow box that completely enclosed the patient. John Minson Galt, superintendent of the Eastern State Hospital of Virginia in Williamsburg, lamented that the invention of the Utica Crib indicated the failure of moral treatment reform (*Eastern State Hospital Exhibit*). Other facilities continued to confine patients in the old manner: Spurzheim recorded that one patient was confined to bed with a twenty-eight pound iron chain and not allowed to turn around for nine years (208).

It has obviously never been ideal to be diagnosed with a mental illness or convicted of a crime; my argument here, however, is that in the nineteenth century it was potentially far worse to be diagnosed and “treated” for insanity than it would have been to be convicted of a crime and sentenced to prison. The juxtaposition of insanity and criminality was more than just an abstract concept: those who faced a choice between the two systems were confronted with a veritable Morton’s Fork. While real defendants or patients may not have been able to choose which system governed their fate, I suggest that Poe and Hogg illustrated the legal fiction of the dichotomy between insanity and criminality by creating such scenarios in their stories.

## **“Why *Will* You Say That I Am Mad?” Testimony and Culpability in “The Tell-Tale Heart”**

The publication of Edgar Allan Poe’s “The Tell-Tale Heart” coincided with the London trial of Daniel M’Naghten<sup>22</sup> for the murder of Edward Drummond. M’Naghten, who was declared not guilty by reason of insanity, would lend his name to the formulation developed in the immediate aftermath of his trial by the House of Lords, known as the M’Naghten Rules. While Poe obviously could not have incorporated M’Naghten’s case or the resulting M’Naghten Rules into his tale (M’Naghten shot Edward Drummond on January 20, 1843, the same month as the initial publication of “The Tell-Tale Heart”), he was familiar with the insanity formulation that existed immediately prior to the watershed decision as well as the pressures that would lead to its replacement by the new formulation.

Contemporary scholarship has invoked the insanity defense in exploring Poe’s narrative purpose in “The Tell-Tale Heart.” Dan Shen, for example, suggests that the most likely rationale for connecting “The Tell-Tale Heart” and the cultural context of the insanity defense is a purposeful extension of ethically oriented dramatic irony that “seems to make the protagonist’s unconscious self-condemnation and the narrator’s unconscious self-conviction reinforce each other in order to convey the implicit moral in a highly dramatic and ironic manner” (343). I agree that Poe’s invocation of the insanity defense is likely intended to evoke dramatic irony, and would add that such a use does not

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<sup>22</sup> The proper spelling of M’Naghten’s last name has vexed generations of legal scholars. Sir Ernest Powers directed The Royal Commission on Capital Punishment in 1949 to use M’Naghten as the official spelling of the name, but other authorities and court documents record the name as Macnaughton, Macnaughten, Macnaghten, Macnaghten, or M’Naghton. See Bernard L. Diamond’s “On the Spelling of Daniel M’Naghten’s Name” for an in-depth treatment of the spelling controversy.

preclude his setting up the insanity defense as a target of social commentary. I am not contending here that Poe intended “The Tell-Tale Heart” to either indict or commend the “right or wrong” version of the insanity defense prevalent in English and American criminal law at the time of Poe’s publication; rather, my intent is to demonstrate that Poe seems to have deliberately crafted a problematic narrative of insanity due to the narrator’s intent to avoid such a finding, thus circumventing the purpose and intention of the insanity defense. While Poe’s narrator may very well be insane – and may very well have committed his crime due to mental illness – his desperation to avoid a finding of insanity is especially noteworthy in the context of nineteenth-century criminal punishment and treatment of the mentally ill, where the narrator’s refusal to invoke the insanity defense both grants him ironic power in determining his destination for punishment in opposition to the ordinary course of the justice system and allows Poe to explore the gap between the culpability-negating legal definition of insanity and actual mental illness.

The English legal system had grappled with the question of how to treat the insane in criminal proceedings long before Poe crafted his tale. By the fourteenth century, English courts “recognized that it was morally improper to punish a person whose mentality did not allow him to understand the difference between ‘good and evil’” (Ewing xviii). Nigel Walker demonstrates that this shift in judicial authority to declare a criminal not guilty by reason of insanity followed a period in which the royal pardon was the primary mechanism for providing clemency to insane criminals (15-16). Royal clemency meant that the lands of the accused were immune from the penalty of forfeiture and managed by the crown until recovery from madness; while profits would be returned to those who recovered, in the case of “idiocy” (i.e. permanent incapacitation) “the king

took profits from the land for the life of the idiot” (Schneider 16). While it is not entirely clear when the exculpatory authority shifted from the crown to the courts, the earliest surviving case of judicial acquittal by reason of insanity occurred in 1505, where “it was found at the time of the murder the felon was of unsound mind . . . Wherefore it was decided that he should go free” (Walker 25-26).

While the early cases make clear that the insane were not to be punished in the same manner as criminal in control of their mental faculties, it is not clear what standard was to be used in evaluating the degree or type of insanity that constituted a defense to punishment. In writing the 1603 decision of *Beverly’s Case*,<sup>23</sup> Sir Edward Coke wrote that “the punishment of a man who is deprived of his reason and understanding, cannot be an example to others . . . No felony or murder can be committed without a felonious intent and purpose” (571). The basic elements of the insanity defense – a lack of felonious intent and purpose, along with a deprivation of reason and understanding – are present, but the metric by which to measure those elements is not. Other jurists such as William Hawkins and Sir Matthew Hale explored the notion that the ability to differentiate between right and wrong should be considered in determining whether an individual defendant’s condition should be exculpatory (Schneider 20). As a result of these lines of inquiry, judges began to pose the specific question “Do you think that the prisoner was capable of distinguishing right from wrong?” to juries, who would then evaluate the evidence presented to answer that question (Ormrod 5).

This specific issue – the capacity of the defendant to determine right from wrong – was integral in the cases of James Hadfield (1800) and Edward Oxford (1840), two

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<sup>23</sup> R. v. Beverly, (1603) 2 Coke’s Rep. 568 (H.L.).

precursors<sup>24</sup> to M’Naghten’s case which “very nearly succeeded in transforming the legal concept of insanity in criminal cases from medieval notions to something approximating to contemporary ideas” (Ormrod 4). The first of these cases was the trial of James Hadfield<sup>25</sup> in 1800 for the attempted assassination of George III. Hadfield was not the first mentally ill person to try to kill George III; that distinction belonged to Margaret Nicholson in 1786. Nicholson was never brought to trial or charged with any specific offense, but was instead examined by the Privy Council, judged to be insane, and sent to Bethlehem Hospital for the rest of her life (Allderidge 100). Patricia Allderidge notes that George III “himself had said immediately after the incident, rather poignantly in view of his own subsequent history, ‘...do not hurt her, for she is mad’” (100). Hadfield, who had fired at George III but missed, was charged with treason rather than murder or attempted murder, and therefore was afforded the right to counsel.<sup>26</sup> At trial, Erskine, Hadfield’s counsel, established that his client, a former Army sergeant with a fine record, had suffered serious head injuries in battle that seriously affected his behavior. Witnesses provided examples of Hadfield’s aberrant behavior to demonstrate his delusional tendencies, and two expert witnesses, a surgeon and a psychiatrist, testified that those delusions were a result of Hadfield’s war injuries (Ormrod 5-6). After Erskine’s closing argument, Lord Kenyon, the presiding judge, stopped the trial and directed the jury to find “that the Prisoner is Not Guilty of the Treason whereof he is Indicted being under the

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<sup>24</sup> Two contemporary cases to those discussed here – *Bowler* (1812) and *Bellingham* (1812) – reached contrasting rulings to those discussed herein and led to the defendants being found guilty of murder and executed. Both cases were viewed as flawed by the time of Oxford’s case in 1840 and were disregarded (Ormrod 8).

<sup>25</sup> 27 St. Tr. 1282 (1000).

<sup>26</sup> The right to counsel was not then guaranteed to defendants charged with murder (Ormrod 6).

influence of Insanity at the Time when the several Overt Acts mentioned in the Indictment were Committed” (Allderidge 105).

Although Hadfield was not convicted of treason, he was also not set at liberty. Lord Kenyon determined that “the prisoner for his own sake, and for the sake of society at large, must not be discharged,” and remanded him back to Newgate Prison (Allderidge 105). Later that year, on 28 July, George III gave Royal Assent to the aforementioned Criminal Lunatics Act of 1800, which provided in part that those acquitted by reason of insanity were “to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until His Majesty’s Pleasure be known” (40). On 10 October, Hadfield joined Margaret Nicholson in Bethlehem Hospital (Allderidge 106), where he died in 1841 (109). “His Majesty’s Pleasure,” it seems, was equivalent to a life sentence in asylum custody.

Forty years later, the trial of Edward Oxford<sup>27</sup>, who unsuccessfully attempted to shoot Queen Victoria and was charged with treason, followed the pattern of Hadfield’s trial. Oxford’s defense team followed Erskine’s strategy by calling personal acquaintances and four doctors as expert witnesses to testify both of his own peculiar behavior and that of his father and grandfather, suggesting a hereditary link (Ormrod 6). Like Nicholson and Hadfield, Oxford was also sent to Bethlehem Hospital to await the pleasure of the monarch. Although he was reported “sane” in every quarterly evaluation and “was described as conducting himself with great propriety at all times,” Oxford remained confined in the asylum for twenty-four years (Allderidge 110).

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<sup>27</sup> 4 St. Tr. 498 (1840).

Crucially for my analysis of Edgar Allan Poe’s “The Tell-Tale Heart,” this English formulation of the insanity defense and its resulting consequence of effective indefinite confinement in an asylum were also quickly adopted in American law; as Lawrence Friedman explains, “[t]he right-or-wrong test was formulated in England, but it corresponded to American notions, and it became standard in the United States as well” (*Crime*, 143-44). Despite any lingering ideological divisions between England and America in its views of criminality, this adoption of the “right-or-wrong” standard suggests a relatively unified approach to the treatment of the mentally ill in the criminal justice system. By the time Poe published “The Tell-Tale Heart” in 1843, the right-or-wrong test was already the standard metric for measuring the application of the insanity defense in American courts.

Individual capacity as the heart of the insanity defense is particularly notable in discussing “The Tell-Tale Heart” because of Poe’s evidently detailed understanding of the “right-or-wrong” test. As John Cleman has pointed out, Poe probably would have read the transcript of the defense of Singleton Mercer on the front page of the Philadelphia *Public Ledger* on March 31, 1843, where Mercer’s counsel laid out the inadequacy of the already disfavored “irresistible impulse” test (626). While Cleman’s use of Mercer’s case is quite useful for his analysis of two of Poe’s other stories – “The Black Cat” and “The Imp of the Perverse” – the Mercer defense came two months after the January 1843 publication of “The Tell-Tale Heart,” making it an unlikely source for Poe’s formulation of the story.<sup>28</sup> The same is true for M’Naghten’s case: although the

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<sup>28</sup> It is also worth noting that the first adoption of the “irresistible impulse” test by a court in the United States was not until 1844 in the Massachusetts case *Commonwealth v. Rodgers*, 7 Metcalf 500 (Mass. 1844).

earlier trials of Hatfield and Oxford would have invited consideration long before the publication of “The Tell-Tale Heart,” the simultaneity of the story’s publication and the Drummond killing foreclose M’Naghten as an influence on the tale.

A timelier source for Poe’s interest in the insanity defense dates from three years prior to the publication of “The Tell-Tale Heart.” On April 1, 1840, *Alexander’s Weekly Messenger* published “The Trial of James Wood,” an account of Wood’s acquittal by reason of insanity for the murder of his daughter. While the account was unsigned at publication, Poe was almost certainly its author.<sup>29</sup> Although Wood’s insanity defense was successful, Poe criticized Wood’s defense counsel on the grounds that “it appears to us that a very material argument was strangely omitted by the counsel for the defence (2).” This argument, according to Poe, “would have had more weight in bringing about a conviction of the prisoner’s insanity than any urged in his behalf. It appears from testimony that the conduct of Wood, when purchasing his pistols at the shop of the gunsmith, was characterised by an entire self-possession – a remarkable calmness – an evenness of manner altogether foreign to his usual nervous habit” (2). Poe noted that the defense might have been afraid to make this argument in fears that a show of calmness would have demonstrated sanity rather than insanity, thus implying “a premeditated and cool-blooded assassination. But the metaphysician, or the skillful medical man, would deduce from them a positive conclusion in favor of Wood” (2). Poe went on to claim that Wood’s normal agitation meant:

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<sup>29</sup> Clarence Brigham first attributed “The Trial of James Wood” to Poe in 1942. Most scholars agree with this attribution, and the Norton Critical Edition of Poe’s works unambiguously lists it as his account.

he could not possibly, in the supposition of his sanity, have *assumed* the calmness of demeanor mentioned. A nervous trepidancy would have manifested itself, if not in an ordinary man, at least in an overstrained endeavor to be calm. But, in the supposition of his insanity, all is natural – all is in full accordance with the well known modes of action of the madman. The cunning of the maniac – the cunning which baffles that of the wisest man of sound mind – the amazing self-possession with which at times, he assumes the demeanor, and preserves the appearance, of perfect sanity, have long been matters of comment with those who have made the subject of mania their study (2).

Additional verification for the validity of the trial review as Poe's is his depiction of madness in "The System of Dr. Tarr and Prof. Fether." Here, the narrator, a guest in a French asylum, observes of a young woman that "[s]he replied in a perfectly rational manner to all that I said; and even her original observations were marked with the soundest good sense; but a long acquaintance with the metaphysics of *mania*, had taught me to put no faith in such evidence of sanity" (55). This view is reinforced by Monsieur Maillard, who states of the madman that his "cunning, too, is proverbial, and great. If he has a project in view, he conceals his design with a marvelous wisdom, and the dexterity with which he counterfeits sanity, presents, to the metaphysician, one of the most singular problems in the study of mind. When a madman appears *thoroughly* sane, indeed, it is high time to put him in a strait-jacket" (72). Maillard's observation is proven when he is revealed to be a patient at the asylum (and the principal perpetrator of the coup against the doctors) rather than the head physician as presumed by the narrator.

It is notable that, in Poe's account of James Wood, there is no discussion of whether or not Wood's mania had any casual relation to his crime, nor does Poe conflate the bilateral "right-or-wrong" test with corresponding demonstrations of mental state: frenzy does not equate to lack of capacity, and demonstrated coolness does not indicate an ability to distinguish the two. Instead, the obverse is true, as the appearance of sanity belies the mental capacity needed to judge right from wrong. Poe's account of James Wood's trial indicates a similar outcome to the cases of Hatfield and Oxford: "The acquittal of the accused on the ground of insanity involves his legal confinement as a madman until such time as the Court satisfy themselves of his return to sound mind" (2). This parallels the outcome of the English insanity cases, substituting the Court's judgment for the pleasure of the Crown. In Poe's judgment, however, that time for Wood would never come: "We cannot believe, however, that this truly unfortunate man will ever be restored to that degree of reason which would authorise his final discharge."

Poe's account of the proceedings against James Wood is striking in the context of the insanity defense for three major reasons. First, it demonstrates that Poe's awareness of the legal definition of insanity and its relation to criminal defense was more than just a passing fancy; although he was not a lawyer, Poe seems to comprehend the actual requirements and practices of the law relating to exculpation by reason of mental illness beyond the understanding of a casual layperson. Second, Poe's account indicates an intuition of madness that goes beyond an easy caricature of wild-eyed lunacy; instead, to Poe, the truly insane may be those who seem rational and calm, those who can "assume the demeanor, and preserve the appearance, of perfect sanity," yet are incapable from distinguishing right from wrong. Finally, Poe seems to suggest that exculpation by reason

of insanity is not entirely a happy outcome. Much as his short story “The System of Dr. Tarr and Professor Fether” indicates a skepticism about the reforming capability of mental institutions, Poe “cannot believe” that Wood “will ever be restored to that degree of reason which would authorise his final discharge.” To Poe’s judgment, asylum detention is, at least in the case of Wood, a life sentence from which there is no parole.

“The Tell-Tale Heart” does not explicitly invoke the insanity defense, and while it seems likely that the counsel for Poe’s narrator would be able to at least invoke the insanity defense, it is by no means certain that a claim of insanity would lead to acquittal. Prior to M’Naghten, a successful defense would need to overcome the presumption of sanity (the insanity defense is an affirmative defense under both English and American law and can therefore only be raised by the defense)<sup>30</sup> by demonstrating the narrator’s defective reason and proving that the defect rendered him unable to discern right from wrong. While it is tempting to immediately delve into an examination of the narrator’s mental state from his disjointed diatribe and start exploring the question of whether or not his reason is defective, that first element – the presumption of sanity due to an affirmative defense – should give pause. I submit that the narrator’s introductory interrogative – “but why *will* you say that I am mad?” (317) – suggests a key to understanding Poe’s purpose in crafting this meditation on insanity and unlocks a crucial component to the narrative: the identity of “you.”

The identity of “you” is a crucial step in analyzing Poe’s narrative of the tale, and otherwise laudatory explorations of the implications of the insanity defense in the tale may not have considered this element as closely as they could have. Cleman categorizes

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<sup>30</sup> See, e.g., 18 U.S.C. § 17; *HM Advocate v. Mitchell* 1951 JC 53 (H.L.).

the “characteristic form” of “The Tell-Tale Heart” as “not confession but self-defense” (630). He claims that the narrator “addresses a specific but unnamed ‘you’ sometime after his arrest but obviously before his execution (if there is to be one). His aim is to refute ‘you’s’ claim that he is insane, a charge that has apparently been both specific and formal enough for the narrator to feel the necessity of responding in earnest and in detail” (630). He also claims that the obviously oral nature of the narrative indicates “something like a courtroom outburst or final statement of the accused” (631). To Cleman, although a successful insanity defense would thwart the “death wish many critics have described as the essence of the narrator’s compulsions to crime and confession,” (633) Poe “inverts or re-deflects the central argument of the insanity defense so that compulsion accounts not for the crime but for the exposure of the crime and its perpetrator,” (634) and “Poe’s deterministic forces lead the guilty to the hangman.” (640). In Cleman’s reading, therefore, insanity is a “charge” against which the narrator must respond, “you” is attempting to prove the narrator guilty of that charge of insanity to his detriment in court, and the narrator’s attempts to refute that charge thus demonstrate his insanity and lead to the fulfillment of the death wish.

Similarly, Brett Zimmerman places the proclamations of Poe’s narrator as “not so much a confession as a defense. ‘The Tell-Tale Heart’ is actually a specimen of courtroom rhetoric-judicial, or forensic, oratory” (34). He further contends that this constitutes a “legal argument in self-defense” (34) and that the narrator, who is “[a]cting as his own defense-lawyer . . . wants to demonstrate, rhetorically, that they were the actions of a sane rather than an insane man – wants, therefore, to refute not the charge that he committed the crime but the charge that he is mad” (40). Zimmerman’s version

therefore interprets “The Tell-Tale Heart” as the crucial dramatic moment of a criminal trial, with an intelligent but fatally flawed self-representing defendant vainly fighting against the implacable machinery of the legal forces arrayed against him – prosecution, judge, and jury – who assert despite (or because of) his wild rhetorical flourishes that he is mad. Like Cleman, Zimmerman places “you” in the functional (if not concretely the actual) position of prosecutor.

While I applaud Cleman’s and Zimmerman’s placement of Poe’s narrator in the judicial setting as well as their cogent analyses of Poe’s incorporation of intentionally flawed rhetoric in the narration, their interpretations both miss one crucial legal point: because madness is a defense to a charge of criminal behavior and not a criminal charge itself, it is therefore impossible that the narrator would be attempting to defend himself from charges of madness by a criminal prosecutor. As mentioned above, the insanity defense is an affirmative defense, meaning that the court begins with the presumption that the defendant is sane and the defense bears the burden for initially arguing and then proving insanity beyond a reasonable doubt. Indeed, prosecuting attorneys have no incentive to demonstrate that a defendant is insane as such a finding removes the defendant from criminal prosecution. Prosecutors instead are focused on demonstrating the guilt of the accused relevant to the crime with which they are charged, issues with which Zimmerman notes that Poe’s narrator is noticeably unconcerned: “he is not concerned with the issue of his responsibility in the crime, with the quality of the evidence against him, with the nature of the law broken, or with determining the extent of harm done to the victim – all important issues in forensic oratory. That is, he is not

concerned with *whether* something happened but with the *quality* of what happened” (40).

This therefore significantly narrows the possible identity of “you.” I suggest that, rather than a prosecutor who has no incentive to even mention madness (much less attempt to “charge” the narrator with a nonexistent criminal charge of insanity), “you” is most likely to be the narrator’s defense counsel. In the criminal justice system, the defense attorney is the only party (other than the narrator) with any incentive to demonstrate that the narrator is mad. This theory still fits within the parameters that Cleman and Zimmerman have created but avoids the legal pitfalls created by trying to shift prosecutors and judges outside of their legal orbits. The dialogue between the defense attorney and narrator would most likely be spoken rather than written, which accounts for the obvious oral nature of the narrative described by Cleman. The subject matter of their conversation would also certainly be legal, which fits Zimmerman’s description of “rhetoric-judicial, or forensic oratory” without falling into the trap of a non-existent criminal charge.

While I have emphasized the possible identity of the figure represented by “you,” Poe indicates that the immediately preceding word is crucial in understanding his narrative, hence his emphasis on the word “*will*,” as in “why *will* you say that I am mad?” Compared with other words he may have chosen, the use of *will* has two important connotations for this discussion. First, asking why “you” *will* say that he is mad implies that the statement of madness has not yet been made (in contrast to “why *do* you say that I am mad?” or “why *did* you say that I am mad?”). Using *do* would have implied a current confrontation, much like the immediate refutation to an oral accusation of which

Zimmerman conceives; using *did* would have implied an argument already made. Poe's use of *will*, on the other hand, suggests that the argument of madness is to be made in the future and that the narrator is both aware of the upcoming argument and is in conversation with the "you" intending to make it – both hallmarks of the defense attorney planning strategy with the client. Secondly, the concept of *will* also implies some capacity for legal agency and autonomy on the part of "you," who may, if he *will*, say that the narrator is mad. This again is suggestive of "you" filling the role of advisor and advocate rather than adversary, as trial tactics are made at the discretion of the defense counsel, who may override his or her client in making tactical decisions.<sup>31</sup> Evidently the decision to argue the narrator's madness has not yet been made, suggesting that the narrator believes his story may have the power to change "you's" mind.

If this theory is correct, as the narrator's defense counsel, the purpose of "you" in the narrative is almost certainly to convince the narrator that pleading not guilty by reason of insanity is the most likely path to acquittal. However, this adds a new element to consider: why does the narrator so vociferously reject the counsel of his attorney by objecting to a strategy that, if successful, could save him from execution or imprisonment? Although distinguishing "you" as the narrator's defense counsel instead of Cleman's and Zimmerman's proposed prosecutor may appear to merely clear up a minor discrepancy, I submit that considering the narrator's rejection of the proposed strategy is a vitally important step towards exploring the construction of "The Tell-Tale Heart" itself. Poe's actualization of the narrator's autonomy in opposing his counsel's advice takes the issue of the identity of "you" beyond wrangling over mere legal niceties

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<sup>31</sup> See, e.g., *People v. Lang*, 49 Cal. 3d 991, 1031, 782 P. 2d 627, 653 (Cal. 1989).

and engages the core issue of the narrator's attempt at self-determination. I suggest three possible rationales for the narrator's plea that "you" not invoke the insanity defense on his behalf: the insanity defense as a barrier to the fulfillment of the narrator's "death wish," a preference for penal incarceration over asylum confinement, and an exploration of the gap between the legal-medical technical requirement of insanity and actual mental illness. The first theory is slightly distinct from but still substantially similar to Cleman's and Zimmerman's conclusions, while the second and third theories suggest alternative ways to read "The Tell-Tale Heart."

The first possibility is the "death-wish" propagated by Paul John Eakin as "an insatiable and morbid curiosity which takes the form of a will to survive in order to know all . . . [t]he mortal 'thirst to *know*,' then, is not fulfilled in the journey out, as Wilbur's one-way formulation might seem to imply, but in the journey out and back" (3). If, as Rachel McCoppin asserts, "the process of self-discovery" is in fact "self-destructive" (106), the driving force for the narrator's confession to the police is in fact a desire to die (and thus return), rendering the insanity defense a stumbling block rather than a stepping-stone to the fulfillment of the narrator's self-determination. Such a reading makes not only the attorney's proposed strategy of the insanity defense unhelpful, but the role of the defense counsel – and the protections afforded to the accused by the judicial system itself – are useless if the narrator wants no intercession between himself and execution. In this case, Cleman's point about "Poe's deterministic forces" would actually be inverted if the defense counsel were sufficiently tenacious to overrule his client's wish to not mount a defense in order to experience execution. As noted above, a crucial jurisprudential obligation of criminal defense attorneys is the obligation to pursue whatever tactics are

required to mount a “zealous defense” even when the client disagrees with the proposed legal strategy. If the “death wish” theory is correct here, the narrator’s drive towards the “journey out and back” could be thwarted if the attorney ignores his plea – “why *will* you say that I am mad?” – and substitutes asylum confinement for criminal conviction and execution by successfully arguing the insanity defense. Rather than the bridge to Poe’s desired demise that Cleman and Zimmerman suggest, therefore, the insanity defense is actually a thwarting obstacle that must be surmounted before the death wish can be achieved.

The second possibility, which is similarly rooted in agency theory but substitutes the possibility of incarceration for execution (both possible punishments for murder in 1843), is a contrast between prison and madhouse: it is possible that Poe’s narrator prefers imprisonment in a penitentiary to indefinite confinement in a mental asylum. Poe did not overtly set any of his tales in contemporary penitentiaries<sup>32</sup> or write about the prison reform movement, and his opinions on the debate between the Philadelphia and Auburn systems of criminal confinement are unknown.<sup>33</sup> However, Poe wrote “The Tell-Tale Heart” while living in Philadelphia during the height of the system’s popularity, so he would have been aware of the contrast between praise of the prison’s relative serenity

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<sup>32</sup> One of Poe’s most famous tales, “The Pit and the Pendulum,” does deal with incarceration, but in a Spanish dungeon during the Inquisition rather than in a modern penitentiary.

<sup>33</sup> According to John Sartain, Poe claimed to have spent a night in Philadelphia’s Moyamensing Prison in July 1849 for either suspected counterfeiting or imbibing “a drop too much” (Quinn 617). He did not record his impressions of the prison, and the event may not have actually happened, as, according to Sartain, Poe later told him “the whole thing had been a delusion and a scare created out of his excited imagination” (Quinn 617).

and rehabilitative effect and criticism of its method of isolation.<sup>34</sup> In contrast and as mentioned above, Poe's "The System of Dr Tarr and Prof Fether" deals specifically with a contemporary asylum modeled after the reforming methods of Phillipe Pinel and satirizes both the strict methods of Tarr and Fether (analogous to the prior brutal treatment of insane that precipitated the moral reform movement) and the "soothing" method of the new staff that culminates in the inmate revolt (similar to the reformatory methods of Pinel and Benjamin Rush). While "The System of Dr Tarr and Prof Fether" is one of Poe's more comic stories and may be entirely tongue-in-cheek, it depicts asylum internment as either brutally harsh or maddeningly "soothing;" both approaches seem, in Spurzheim's words, "calculated to produce insanity, or at least to prevent the cure, rather than to promote it" (159). It is also worth noting that, unlike a prison sentence, which has fixed terms and may be shortened by judicial authority through parole, Poe was well aware that asylum confinement was indefinite and often served as a *de facto* life sentence, hence his ominous epitaph in his coverage of James Wood's trial that he would never "be restored to that degree of reason which would authorise his final discharge" (2). Neither penal incarceration nor asylum confinement were particularly happy options in the 1840s, but Poe's narrator's insistence on avoiding the insanity defense may be a clue that, at least in Philadelphia in 1843, a stint in a modern penitentiary was preferable to the horrors of the madhouse.

Finally, Poe may have been exploring the gap between the legal definition of madness and actual mental illness. Poe's narrator recognizes that, although he may

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<sup>34</sup> For further reading on the Philadelphia movement, see Negley K. Teeters and John D. Shearer's *The Prison at Philadelphia Cherry Hill: The Separate Systems of Penal Discipline: 1829-1913*.

indeed be mentally ill, his madness is not necessarily the degree or kind of infirmity that would render him unaccountable under the “right-or-wrong” test of the insanity defense. To lead to acquittal, “you” would have to convince a jury either that the narrator was unable to appreciate the “nature and quality of his actions” or was unable to recognize that his actions were wrong. The narrator’s use of language, however, seems designed specifically to thwart the assumptions about insanity inherent in the defense.

In regards to the first test of sanity – the ability to appreciate the nature and quality of his actions – the narrator attempts to persuade “you” of his possession of his cognitive faculties by stating “[m]admen know nothing. But you should have seen *me*. You should have seen how wisely I proceeded – with what caution – with what foresight – with what dissimulation I went to work!” (317). The evidence that he offers – his kindness to the victim before the murder, his slow and cautious nightly forays into the old man’s apartments, his careful dismemberment and concealment of the corpse, and his artful deception to the police – is all designed to persuade “you” of his capacity for forethought and his capability in carrying out complex actions. His superbly detailed planning is evidenced by the minuteness of his movements, which he calculates and executes to such a degree of precision that even “[a] watch’s hand moves more quickly than did mine” (318). He accompanies each account with a disclaimer supporting his own sanity: “Ha – would a madman have been so wise as this?” (317), “If still you think me mad, you will think so no longer when I describe the wise precautions I took for the concealment of the body” (319), “My *manner* had convinced them. I was singularly at ease” (320).

Although the narrator's insistence on his reason may negate the formal requirements for the legal defense of insanity, his rhetorical efforts belay his purpose: instead of providing a convincing narrative of his sanity, his repeated insistence instead marks him as unbalanced. Poe's purpose in this presentation seems evident, as James Gargano notes that "the cleavage between author and narrator is perfectly apparent. The sharp exclamations, nervous questions, and broken sentences almost too blatantly advertise Poe's conscious intention; the protagonist's painful insistence on 'proving' himself sane only serves to intensify the idea of his madness" (825). This reading is further validated by Poe's account of the trial of James Wood discussed earlier, in which only the insane could "assume the calmness of demeanor" necessary. What emerges from this account is therefore an important fissure between legal requirement and true mental state. Despite being obviously unbalanced from Poe's perspective as an author, Poe's narrator appears able to understand and appreciate the nature and quality of his actions, rendering him therefore legally sane despite being factually insane.

A similar analysis follows for the second test: the narrator's ability or inability to distinguish right from wrong. Try as he might, the narrator cannot articulate a motive for his killing of the old man: "Object there was none. Passion there was none. I loved the old man. He had never wronged me. He had never given me insult. For his gold I had no desire" (317). In short, terse simple sentences, the narrator eliminates the usual array of reasons – passion, revenge, avarice – common to many of Poe's other stories of murder. What exists instead is some vague impression, some "irresistible impulse," to kill. The source of this impulse is as unknown to the narrator as its influence is powerful, for while "[i]t is impossible to say how first the idea entered my brain; but once conceived, it

haunted me day and night” (317). A vague and uncontrollable urge to kill could seemingly eradicate the narrator’s capability of determining right from wrong; however, the narrative complicates that desire, as his urgings have not entirely negated his other feelings. As he describes his mental state on entering the old man’s chambers for the final time, “I *felt* the extent of my own powers – of my sagacity. I could scarcely contain my feelings of triumph” (318). Here his description leaves the boundaries of madness and enters into glory in the impending kill, an emotion that suggests evil and depravity rather than insanity and deprivation of sensation. Further in the narrative, the beating of the old man’s heart “increased my fury, as the beating of a drum stimulates the soldier into courage” (319). This statement seems to contradict the earlier claim that “passion there was none” (317). Even if the original motivation for the killing was an unknown uncontrollable urge, the narrator’s description of his glory and his rage – as well as his ability to control those emotions during the seven days between conception and implementation of the killing – indicates yet another gap between legal and actual insanity.

This fissure is also representative of public prejudice against the insanity defense. The idea that mentally ill murderers should still be criminally culpable was manifested in what Karen Halttunen calls the “rich domestic detail” of British and American literature focusing on the murder of a “full array” of victims by their supposedly insane relations (138). One of the cases that Halttunen lists (and which Cleman mentions in a footnote) (631) is that of Benjamin White, who murdered his father early in 1843. The *Southern Patriot* described White’s father as “a pious man,” while White had “conceived a strong hatred of him for supposed ill treatment, and especially because he was a Christian, the

son being a Deist” (2). At trial, where he confessed his guilt and was sentenced to execution by hanging, he “made a long, rambling address to the Court, in abuse of christianity and his deceased father, whose murder he confessed. He manifested no penance, and was anxious only that a narrative he has written in support of Deism should be published” (2). Another account published by *The New York Herald* noted both White’s admittance of culpability and his refusal to allow his lawyer to argue the insanity defense notwithstanding his own clear irrationality. Similarly, the *Herald* blamed White’s actions on “the effects of infidelity and irreligion,” citing insanity as a symptom of White’s defiance of Christianity and subsequent moral decay rather than of mental illness (1).

White’s acknowledgement of his guilt and refusal to plead the insanity defense, along with the attribution of moral causality, provides an interesting parallel for this final area of consideration. While the fictional tale and this real-life analog were not in direct conversation (like M’Naghten’s killing of Drummond, White murdered his father just after the publication of “The Tell-Tale Heart”), neither were truly unique to either America or Britain, but were participants in a long dialogue about the nature of madness and evil. Here, Poe may in fact be playing with the idea of madness as separate from the insanity defense entirely. In this reading, madness is neither a bridge to a preferable form of punishment nor a bulwark against a death wish which must be overcome, but instead is a frustratingly tantalizing gap: while madness may exculpate a defendant from being criminally culpable and thus create the impression that they are outside society’s judgment of as evil, a defendant may be evil despite also being mad...or madness may be the direct result of prior acts of evil.

While this ambiguity is frustrating, this multitude of possibilities may be the most important aspect of exploring “The Tell-Tale Heart” in the context of the insanity defense. By design, the tale is ambiguous, as no characters are named and the reliability of every word is under question. The exercise of attempting to impose meaning on such an intentionally opaque story must therefore recognize those inherent limitations while still attempting to argue for a framework of understanding. Here, I have attempted to demonstrate a plausible identity of “you” and meaning of “*will*” that allows us to explore “The Tell-Tale Heart” as neither a straightforward narrative of madness nor of evil; rather, Poe’s tale can be read as an indictment of a defense that thwarts exploration into death, a commentary on the penitentiary and asylum movements, or an examination of the gap between the formulaic and unreliable legal definition of insanity and the uncertain terror of mental illness. If this third reading is correct, the narrator of “The Tell-Tale Heart” may suggest the existence of a criminal culpability that exists despite the incapacitating effects of mental illness.

**“Drooken Away His Seven Senses”: Incapacity, Demonic Possession, and Confinement in ‘Strange Letter of a Lunatic**

Both this potential gap between the legal definition of insanity and culpability despite mental illness and the potential preference for criminal punishment over asylum confinement are also present in James Hogg’s ‘Strange Letter of a Lunatic.’ While Hogg did not write any real life trial accounts like Poe’s “The Trial of James Wood,” his short story demonstrates a keen understanding of the unique elements of the Scottish version of the insanity defense. As I will discuss in Chapter Four, both the English “right-or-wrong” version of the insanity defense and its subsequent modification after Daniel M’Naghten’s

case heavily influenced the American colonies, where they impacted new state formations of the insanity defense after the American Revolution. The English version's migration to the United States, as well as its durability despite its many perceived shortcomings, is particularly interesting when contrasted with the Scottish approach to the insanity defense. As a byproduct of Scotland's jurisprudential separation from England, Scotland was free to develop its own conception of the insanity defense. The resulting Scottish formation is unique amongst English speaking nations in its early adoption of two major ways. First, unlike the English and American systems, where the political drama of insane assassins such as Hadfield and M'Naghten made the resulting formulation a political as much as a legal decision, Scotland's formulation was less fractured and more organic. While proposals for reform of Scottish insanity law have arisen in the past forty years, this is a relatively contemporary phenomenon; for most of Scotland's history, the insanity defense has been comparatively stable to that of other English-speaking jurisdictions (Scottish Law Commission 1). Second, Scotland pioneered an alternative to a complete insanity defense: that of diminished responsibility, a concept that did not arrive in English law until 1957<sup>35</sup> and in United States law until 1954<sup>36</sup> (Boland 125).

Scottish legal scholars generally situate the articulated authority for the Scottish insanity defense in the Commentaries of Baron Hume, who declared “[t]o serve the purpose of a defence in law, the disorder must therefore amount to an absolute alienation of reason... such a disease as deprives the patient of the knowledge of the true aspect and position of things about him – hinders him from distinguishing friend from foe – and

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<sup>35</sup> The Homicide Act of 1957 (5 & 6 Eliz.2 c.11).

<sup>36</sup> *Durham v. U.S.*, 214 F. 2d 862 (1954).

gives him up to the impulse of his own distempered fancy” (37). Hume’s phrase “absolute alienation of reason” is still the cornerstone of the contemporary Scottish insanity defense,<sup>37</sup> and Hume’s definition has proved more stable than those in other jurisdictions; while England and many of the United States have fiercely debated their tests, “Scots law has avoided any deep-rooted controversy about the definition of the defence of insanity” (Scottish Law Commission 14).

As a rule of determining if a defendant is actually insane, Hume’s formulation is not a wild contrast from the standards invoked in *Hatfield* and *Oxford*; interestingly, although Scottish and English law used separate bodies of precedent, Alexander Cockburn referenced Hume’s position on insanity in his opening statement in defense of Daniel M’Naghten<sup>38</sup> (Schneider 173). The distinction between the Scottish and English positions on insanity was thrown into sharper relief once the House of Lords formulated the M’Naghten Rules. As Lord Strachan articulated in *HM Advocate v. Kidd*<sup>39</sup>:

At one time, following English law, it was held...that if an accused did not know the nature and quality of the act committed, or if he did know it but did not know he was doing wrong, it was held that he was insane. That was the test, but that test has not been followed in Scotland...Knowledge of the nature and quality of the act, and knowledge that he is doing wrong, may no doubt be an element, indeed are an element, in deciding whether a man is sane or insane, but they do not, in my view, afford a complete or perfect test of sanity. A man may know very

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<sup>37</sup> See, e.g., *Brennan v. HM Advocate*, 1977 JC 38.

<sup>38</sup> Cockburn appears to have been somewhat self-conscious about invoking Hume, as he prefaced his reading of Hume with “It is almost with a blush that I now turn from the authorities in our own books, to those which I find in the works of the Scottish writers on jurisprudence” (Schneider 173).

<sup>39</sup> 1960 JC 61.

well what he is doing, and may know that it is wrong, and he may none the less be insane. It may be that some lunatics do an act just because they know it is wrong (71).

Here, Lord Strachen suggests that the “definitive” English standard of either not knowing the nature and quality of the act or not knowing that the act is wrong is in fact incomplete; such an evaluation is merely one element in a more holistic approach to determining whether the defendant suffers from an “absolute alienation of reason.” While Hume’s word “absolute” suggests a harsher standard, Strachen’s commentary suggests the opposite: one who knows an act is wrong and still does it (or, in fact, does it specifically because he or she knows that it is wrong) may still be a lunatic. Under this formulation, a defendant who is perfectly sane – and therefore criminally culpable – under English law may in fact be legally insane under the Scottish standard.

Additionally, a crucial difference between the Scottish and Anglo-American versions of the insanity defense lay in their possible outcomes. Although an English or American jury may return a verdict of not guilty by reason of insanity that results in the defendant’s detention for psychiatric treatment (Smith 135-36), Scots law also provides the option of “diminished responsibility,” in which the charge of murder is reduced to that of culpable homicide<sup>40</sup> (Smith 142). Such a charge is still a criminal charge that leads to conviction if proven guilty and, although to a lesser degree than murder, is punished punitively rather than therapeutically. The desirability and efficacy of diminished responsibility was not easily agreed upon: while George Mackenzie argued in the

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<sup>40</sup> Culpable homicide is functionally equivalent to voluntary manslaughter in English and American law. Although the charge itself is not unique to Scots law, its ability to stand in as a substitute for a verdict of not guilty by reason of insanity is.

seventeenth century that a punishment between full murder conviction and being found not guilty was necessary for defendants who were “not absolutely mad yet are hypochondrick and melancholy to such a degree that it clouds their reason” (Smith 142), Hume believed a century later that diminished responsibility would only apply to “inferior degrees of derangement, or natural weakness of intellect, which do not amount to madness and for which there can be no rule in law” (Smith 142). Scottish courts varied in their application of diminished responsibility until 1867, when the decision in *R. v. Dingwall*<sup>41</sup> established the practice of returning a verdict of culpable homicide rather than murder. The official criteria for when diminished responsibility applied would not be articulated until 1923, where the High Court held in *HM Advocate v Savage*<sup>42</sup> that:

there must be aberration or weakness of mind; that there must be some form of mental unsoundness; that there must be a state of mind bordering on, though not amounting to, insanity; that there must be a mind so affected that responsibility is diminished from full responsibility to partial responsibility – in other words, the prisoner in question must only be partially accountable for his actions. And I think one can see running through the cases that there is implied... that there must be some form of mental disease (51).

In moving to examine how a consideration of Scots law impacts reading James Hogg’s two versions of “Strange Letter of a Lunatic,” then, the following should be noted about the Scottish insanity defense. First, the insanity defense in Scotland is largely represented as a stable establishment, especially when contrasted with the fluctuations in English law. Hogg’s narrator in the “Strange Letter” precisely defines events in days and months, but

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<sup>41</sup> (1867) 5 Irv 466.

<sup>42</sup> 1923 JC 49.

is not clear about the year<sup>43</sup> of the letter's setting. Regardless of whether the story is intended to be set proximate to its publication date or, like *The Private Memoirs and Confessions of a Justified Sinner*, is more fluid in its temporal structure, it is therefore not anachronistic to suggest that the legal standards for the insanity defense would have been largely unchanged. Second, unlike relatively stringent English laws that narrowly defined the parameters by which a defendant could be considered insane, Scots law allows for a broader examination of factors that may lead to a finding of insanity. Finally, unlike English and American law, Scottish courts have a third variable outcome besides full criminal conviction and the ruling of not guilty by reason of insanity in the doctrine of diminished responsibility, which allows the court to still find the defendant criminally liable, but for a lesser charge.

Unlike the vast body of scholarship that Poe scholars have produced to analyze "The Tell-Tale Heart," Hogg's "Strange Letter of a Lunatic" has received comparatively little attention beyond its inclusion in Thomas C. Richardson's collection of Hogg's contributions to *Blackwood's Edinburgh Magazine* and Douglas S. Mack's anthology *James Hogg: Selected Stories and Sketches*. As I mentioned in the introduction to this chapter, Susan Manning references the story in her analysis of Poe's "William Wilson." Susan M. Levin briefly mentions "Strange Letter" in her analysis of doubling in *Private Memoirs and Confessions of a Justified Sinner*, and S. T. Joshi and Gerald Bär each reference James Beatman in their discussions of fictional doppelgängers.

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<sup>43</sup> Thomas C. Richardson posits that the "grand procession" and "splendid dinner" in Edinburgh that Beatman uses to begin the story is "perhaps a reference to the celebrations, which Hogg attended, at the opening of the new High School in Edinburgh" (395), which occurred in the summer of 1829.

Caroline McCracken-Flesher, in the sole article focused exclusively on the “Strange Letter,” argues that “the story has ramifications far beyond its conventional status as gothic tale,” suggesting that the letter “maps with some precision the discomforts of the nineteenth-century Scot located for money-making purposes within England’s inevitably controlling orbit” (24). In McCracken-Flesher’s reading, James Beatman’s double, “a second self that has displaced his reality” (37), forces him into the position of an unwilling Scot forced to masquerade as an outsider, as “he is reconstituted as tourist in his own land” (36). This reading identifies the loci of this colonizing power as both external and internal to Scotland: Hogg both “narrates the dilemma of the contemporary Scot subjected to English tourism’s colonising power” and “manifests a sophisticated awareness that with Scotland and the Scots refigured under pressure from the tourism the Scots themselves had invited, even those who have never left Scotland can’t go home again” (38-39). In addition to McCracken-Flesher’s insightful location of the story in “Scotland’s post-colonial figuration” (24), I would suggest that the issues surrounding mental illness, the insanity defense, and the potential crimes of James Beatman, which are part of the “Gothic” and “appropriately psychotic missive from its presumed lunatic author” (24) that McCracken-Flesher purposefully sets to the side in her reading, complicate that reading by locating James Beatman’s captivity within a uniquely Scottish – and emphatically non-English – version of the insanity defense.

While the key plot elements of the story are consistent across both Hogg’s published version in *Fraser’s Magazine* (December 1830) and the earlier draft he initially submitted to *Blackwood’s Edinburgh Magazine* earlier in the year, the two versions feature some interesting variances. As I will discuss below, most of Hogg’s original draft

is a relatively light-hearted story with a self-conscious narrator who seems amused – or at least bemused – by his encounter with a possible double; his counterpart in *Fraser's*, on the other hand, is instantly angered at the sight of his doppelgänger. The second draft, which presents the double as diabolic rather than psychological or coincidental, taps into theories of demonic possession surrounding mental illness and the insanity defense, while the *Blackwood's* version appears on its face to be a more innocuous study of circumstance.

One possible explanation for the tonal change between the two was Hogg's financial difficulties; as Gillian Hughes describes, Hogg's debts had caught up with him by March 1830, leading to the auction of his goods by the Duke of Buccleuch and leaving him "depressed and unwell" (221). This may also partially explain his change of venue from *Blackwood's Edinburgh Magazine* to *Fraser's Magazine*, as William Blackwood "offered little more than sympathy" to Hogg's precarious situation, refusing to pay him for *The Shepherd's Calendar* citing disappointing sales (Hughes 218). In a letter to Blackwood written on 12 February 1830, Hogg submitted "the Laird of Lonnie" for consideration but requested the return of the "three tales and three songs of mine in hand," claiming that "having no copies I am jealous beyond measure of the original no matter how trivial they may appear in Mr Wilson's eyes" (374). This was hardly the first moment of editorial tension between Blackwood and Hogg; as Thomas C. Richardson has demonstrated, "Hogg was often irritated by the lack of respect from the Blackwoodians for him personally and as an author, but Hogg also recognized the value of his name in the magazine market and that he benefited his publisher as much as he benefited from publication" (188). In a subsequent letter to Blackwood written on 6 April

1830, Hogg claimed that “the thousand vulgarities and absurdities with which I am characterised” in *Blackwood’s* had “ruined my literary character altogether, so completely that I am told by many London correspondents that no work of mine will ever sell again or likely ever be published again” (378). Hogg’s threats to boycott *Blackwood’s* were usually short-lived,<sup>44</sup> and he submitted two new tales to Blackwood on 28 April 1830; in the same letter, however, he wrote “The Merits of the other ‘The Lunatic’ is rather equivocal. I will however try it in London” (381). He followed through by choosing the new *Fraser’s Magazine*, which published his story in its second edition.

While the publication history of the two versions of “Strange Letter of a Lunatic” is promising for scholarship focused on book history, I am primarily interested in comparing these two drafts both for their seeming narrative differences and their overriding similarities regarding James Beatman’s potential mental illness, its implications for his temporary elusion of criminal punishment, and his ultimate confinement in asylum. As I will demonstrate, the two drafts seem to shape James Beatman’s mental state in very different ways: while the *Blackwood’s* Beatman seems in relatively good spirits throughout the story and may be the victim of a seemingly innocuous prank, the *Fraser’s* narrator reacts with violent horror to his double and is clearly depicted as either obviously mentally ill or the victim of supernatural, and potentially demonic, possession. The unified endings of both versions, however, end with Beatman incarcerated in an asylum. This both suggests his innocence – or, at least, his

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<sup>44</sup> On 29 October 1819, for example, Hogg wrote an angry letter to Blackwood, complaining “But really I have been so much mortified by the refusal of all my pieces that I cannot bear to think of writing for the Magazine now. And though I always praise it above all other periodical works and wish it with all my heart every success yet would I rather sit down and write for the shabbiest work in the kingdom where everything I write is revered” (59). Hogg was writing again for *Blackwood’s* by November.

lack of legal culpability – for the criminal offense purportedly committed against the young woman on the boat and places him in the circumstance Poe’s narrator in “The Tell-Tale Heart” seemed so desperate to avoid: indefinite detention with no procedural recourse for escape. Whether the appearance of the double has been caused by psychological disorder, demonic possession, or mere happenstance, Hogg’s placement of Beatman as ultimately powerless in the grasp of a mental asylum by the end of the story provides meaningful juxtaposition with this earlier escape from criminal prosecution and punishment.

In both versions of the story, Beatman recoils from his asylum attendant’s leering accusation that “you have drooken away your seven senses,” claiming that “this vile hint has cut me to the heart” (86; 531). The *Blackwood’s* Beatman, however, negates his rebuttal to this accusation from the beginning of the story, which places heavy weight on Beatman’s imbibing. Hogg locates the initial action of the narrative at “a grand procession,” “a splendid dinner,” and “a celebrated dinner” (77). The enthusiastic adjectives with which Beatman characterizes these engagements match his depiction of the drinking that takes place at each: “as the glass and song went brilliantly round it was not long before the whole party began to get bouzy, and then there was an utter confusion took place between the stranger and myself for my friends were frequently addressing him on my business” (77). The “brilliance” of the consumption of drink and ebullience of song here is directly correlated with the confusion between Beatman and the double, which is presented not as a malicious supernatural plot to confound the narrator, but as the natural progression of seemingly harmless drinking. Beatman acknowledges that the drink has impaired his faculties, writing “I think I must have been very tipsy before the

conclusion of the scene, as it really became like a dream to me, and I seemed not to know aright which of the two was myself, or which was the right James Beatman” (77-78).

This dream-like sense of dislocated self continues to be fueled with alcohol throughout the narrative, casting doubt on Beatman’s refusal to acknowledge that he has “droonken away his seven senses.”

The *Fraser’s* story, however, begins very differently. Rather than opening with Beatman as a happy and profligate patron of Edinburgh festivities, this narrative opens with the consumption of a more sinister and diabolic substance. While “walking very early on the Castle Hill one morning,” the *Fraser’s* Beatman encounters “a strange looking figure of an old man watching all my motions” (526). After presenting Beatman with snuff, the old man “went away chuckling and laughing in perfect ecstasy. He was even so overjoyed that, in hobbling down the platform, he would leap from the ground, clap his hands on his loins, and laugh immoderately” (526). This portrayal juxtaposes the old man’s apparent infirmity with capable physicality, as he seems both impaired by his hobble and energized enough to leap. Hogg may be playing with the mythical physiognomy of the devil, who was reputed to hobble when disguised as a mortal due to his cloven hooves. If the old man is the devil in disguise, Beatman seems to see through his deception after he was partaken of the snuff, saying “The devil I am sure is in that body” (526). Notably, Beatman’s realization seems linked to his consumption of the substance: while his manner prior to consumption is relatively affable, he claims “I feel very queer since I took that snuff of his” (526). It is possible that the old man’s snuff, like the alcohol from the *Blackwood’s* version of the tale, parallels substance abuse rather than the supernatural. Richard D. Jackson lists this encounter among those that support

Hogg's participation in Romantic discourses about opium usage, although he does not assign it the same certainty that he does to other stories (19). It seems more likely, however, that the old man's snuff is demonic rather than hallucinogenic, suggesting a compound more otherworldly than opium or tobacco.

While this encounter with the old man and the snuffbox is present in the *Blackwood's* version of the story, Hogg depicts it here as a mere anecdote rather than an overriding explanation of the double. The *Blackwood's* Beatman, confused at his experience in the coach office, "began therefore to think over all that I had been engaged in, to see if I could recollect how I had been bewitched and turned into two people, but I could recollect of nothing out of the ordinary course of events" (79). His one exception to the "ordinary course of events" is his encounter with the old man, but this is presented as benignly mysterious compared to the *Fraser's* version; the *Blackwood's* figure has a "singular figure and aspect" (79) rather than the devilish contortions of his *Fraser's* counterpart, merely "went away" (79) after their encounter instead of lapsing into the *Fraser's* figure's archetypically demonic "hobbling," and his offer of the pinch of snuff comes with "great courtesy" (79). While the old man does seem to have a similar feeling of triumph when Beatman accepts the pinch, "chuckling and laughing as if he had caught a prize" (79), Beatman only assigns it the vague suspicion of the uncanny rather than the demonic implications of the *Fraser's* version, trying "to reason myself out of the belief that there could be any thing supernatural communicated by such a simple incident, nevertheless the impression left on my mind would not be removed" (79). This claim appears highly revisionary, however, as Beatman only remembers the incident as part of

his effort to “think over all that I had been engaged in, to see if I could recollect how I had been bewitched.”

Like his counterpart in *Fraser's*, the *Blackwood's* Beatman dreams about the old man on the night before his final encounter with the double; this is the only other mention in the *Blackwood's* version of the story of the purported supernatural explanation. This dream does have a seemingly debilitating effect, as “when I awoke I was quite stupid and overcome with dismay assured, that I laboured under the power of enchantment” (84). Although this may suggest a closer tie to the supernatural than the previously anecdotal nature of the old man explanation may otherwise indicate, the symptoms of the dream – “when I awoke I was quite stupid” – are more in line with those he has been experiencing throughout the story due to drink than they are of any new kind of witchcraft. In contrast, the *Fraser's* Beatman's dream explicitly invokes the transformation from the story's opening, as the old man “told me that I was now himself, and that he had transformed his own nature and spirit into my shape and form; and so strong was the impression, that when I awoke, I was quite stupid” (530).

The supernatural transformation from deceptive tobacconist to demonic doppelganger is crucial to the *Fraser's* version, where, in their first encounter, Beatman explicitly states that, after tracking down the old man, “I hastened to him; but on going up, I found myself standing there. Yes, sir, myself. My own likeness in every respect” (526). This partially explains his dual shock and anger at encountering the double in his dinner party later that evening; Beatman describes himself as initially “struck speechless,” and, on hearing his counterpart give his name as “James Beatman,” cries “I deny the premises, principle and proposition... James Beatman, younger, of Drumloing, you cannot be. I am

the *right* James Beatman” (526). Unlike his *Blackwood’s* predecessor, who “was not a little startled” at his first meeting with the double but “thinking it was a quiz I took no thought farther of the coincidence,” (79) the *Fraser’s* Beatman’s reaction is a mixture of rage and genuine confusion, leading him “seriously to doubt which of us was the *right* James Beatman” (526). While the double appears to be the cause and the source of his anger, self-doubt – and, potentially, self-loathing, is also woven into his frustration. Beatman’s combination of anger towards his imitating interloper and corresponding doubt of his own identity throughout the *Fraser’s* narrative seems to echo Maudsley’s description of the treatment of mentally ill individuals suspected of demonic possession: “the natural result of such views of madness that men should treat him whom they believed to have a devil in him as they would have treated the devil could they have had the good fortune to lay hold of him” (10). Beatman’s doubt is not limited to his own internal musings, as his double actually inverts his suspicions by claiming that Beatman is, in fact, the devil in disguise: “you must be perfectly sensible that you are acting a part that is not your own. That you are either a rank counterfeit, or, what I rather begin to suspect, the devil in my likeness” (530). Their subsequent duel embodies Maudsley’s description, as both characters target the other as the physical incarnation of Satan in an attempt to determine, as Beatman describes it, “who is the counterfeit, and who is the *right* James Beatman, you or I” (530).

This frenetic repetition of “*right*” is a unique preoccupation to the *Fraser’s* version of the story, suggesting a genuine paranoia about the possibility of replacement. While the *Blackwood’s* Beatman uses the phrase a few times throughout his narrative, it is generally not emphasized, nor does not dominate his internal conversation as it does

from the very beginning of the *Fraser's* version. The *Fraser's* Beatman uses this phrase to compound the possibility of demonic possession and his own crisis of self-identity the next day at the coach-office encounter: "It must have been the devil, thought I, from whom I took the pinch on the Castle Hill, for I am either become two people, else I am *not* the *right* James Beatman" (527). This is a major alteration from the original draft, where the *Blackwood's* Beatman meets "my liberal and whimsical namesake Mr Beatman. I immediately bustled up to him and took him by the hand for in fact a more pleasant and delightful gentleman I had never met with and I said I was glad to meet with him again" (79). Hogg places this encounter directly after Beatman's reminiscence of the Castle Hill encounter, negating the demonic connection between the two that becomes so pivotal in his later draft. Instead, this *Blackwood's* Beatman confidently places his second in the position of namesake rather than the other way around, implicitly assigning himself the position of the *right* Beatman; in *Fraser's*, this is placed in doubt from the beginning of the story.

Hogg's framing of the two versions of the story compounds this epistemological difference between the drafts. Both versions of the story are ostensibly a real letter written to Hogg himself; both drafts address Hogg's "purpose of collecting all the whimsical and romantic stories of this<sup>45</sup> country" (526), and Beatman takes "the fancy of sending you an account of a most painful and unaccountable<sup>46</sup> one that happened to myself, and at the same time leave you at liberty to make what use of it you please" (526). The *Blackwood's* draft concludes with Beatman's signature, leaving his version of the events to stand without external contradiction or corroboration. As the story is titled

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<sup>45</sup> The *Blackwood's* version reads "in this country" (77).

<sup>46</sup> The *Blackwood's* version reads "distressing and unaccountable" (77).

‘Strange Letter of a Lunatic,’ the letter does not seem strongly supported, suggesting that Beatman is not, whether from having “dronken away his seven senses” or as a result of his encounter with the double, a highly reliable narrator. Hogg’s added postscript to the *Fraser’s* version initially reinforces this – “certainly I would have regarded it altogether as the dream of a lunatic” (531) – but, similar to his narrative framing in his more famous *Private Memoirs and Confessions of a Justified Sinner*, complicates this dismissal with a corresponding letter from Walker, who warns that “these thoughts will not conform to human reason” (531). Walker contextualizes Beatman’s injury by noting that a duel must have been the reason for the gunshot wound, as the angle made it “quite impossible that the pistol could have been fired by his own hand,” but no duel could have occurred because “there was no other man there that any person knew of” (532). If Walker’s postscript can be trusted, and Hogg takes pains to present Walker as a personal acquaintance of some reliability, the letter corroborates both the actuality of Beatman’s injury and the ethereality of his double. In contrast, the *Blackwood’s* Beatman claims that he tried to shoot his double, but received no wound in return; instead, “he seized on me mastered me with ease and bound me; at least so I supposed” (85). The phrase “at least so I supposed,” which precedes Beatman’s admission of a missing eleven week gap in his memory, throws doubt on his entire account. The physicality of his double’s mastering echoes his treatment at the asylum, where he is confined with his “arms pinioned” (85). Beatman’s entire narrative, therefore, could be a tale invented from his treatment at the asylum, and Hogg provides no further confirmation or rebuttal of Beatman’s version of events in *Blackwood’s*. Where the *Blackwood’s* Beatman’s incapacitating “paroxism of rage” (85) could easily be the product of a mental fit, the *Fraser’s* Beatman has suffered

a debilitating external injury from an invisible assailant, reinforcing again the suspicion of demonic interference.

Despite these important narrative differences towards the materiality of Beatman's encounter with his double, both versions of the story take a similar approach towards reconciling Beatman's asylum confinement with the only actual crime in the story: the unspecified "insult" to a young woman on the boat, which neither the *Blackwood's* nor *Fraser's* Beatman remember committing. Despite his protestations of innocence, Beatman is arrested in both versions of the story, although the differences in the detail of that arrest are worth noting. The *Fraser's* Beatman is arrested in a relatively straightforward fashion, as he is "committed for a criminal assault, and carried off to prison... There I was given over to the constable, and put under confinement till I could find bail" (529). This arrest seems clearly within the province of the criminal justice system, as Beatman is accused of a crime and arrested for the commission of that crime. The earlier draft, however, presents the confinement as explicitly extralegal. While Beatman records that the woman's brother threatened to "give me into the hands of the constables and have me indicted for a criminal assault" (83), he is actually imprisoned for a different cause. After he attempts to explain the "inextricable phenomenon" of his double's appearance, "the people thought I was raving, so I was given over to the constables and put under confinement till I procured very high bail for my appearance" (83). This is a slight but essential difference, as the *Blackwood's* Beatman is not clearly charged with any criminal offense, but is confined due to suspicion of mental illness manifested by his "raving." As discussed in my discussion of "The Tell-Tale Heart," as insanity is a defense to a crime rather than an actual crime, Beatman's confinement here

appears unrelated to his purported assault of the young woman. Even if the constables have arrested him for suspicion of assault, his confinement seems more related to his potential for future violence due to “raving” rather than the crime he has supposedly committed.

However, even in this *Blackwood's* version, Hogg treats Beatman's supposed mental illness initially as a crime, as Beatman is allowed freedom upon production of bail, which is available for suspected criminals but not for patients in asylum care. Both versions then quickly move on to Beatman's further confrontations with his double without resolving the outcome of the assault. It is worth noting that both versions minimize the involvement of the female assault victim, who is actually the only indisputable victim of any criminal activity in the story. If the elusive double is actually a real person, he is probably the victim of attempted murder but never appears to press charges or provide physical proof of crime; this unnamed young woman, in contrast, both alleges Beatman's assault and, in the *Fraser's* version, provides two witnesses to reinforce her claims (529). Beatman's seemingly effortless ability to procure bail (likely by relying upon the financial resources of his father) seems, however, to allow him to elude punishment for this crime. While, as a first-person account, his refusal to further memorialize the details of the purported assault should be viewed with suspicion, Beatman's narrative focus appears fixated on the product of his mental illness/demonic possession – his double – rather than on his victim. Unlike Poe's obsessive narrative in “The Tell-Tale Heart,” which voyeuristically focuses intensely on the body of his victim, the victim in Hogg's story is extremely underplayed, particularly for an offense implicitly sexual in nature.

While this could be an overt or unconscious neglect of a female victim on Hogg's part, tragically minimizing her concrete suffering in favor of Beatman's self-obsessed delusion, this also could potentially negate Beatman's criminal culpability if, during his eleven week "lost" period, he was in fact tried for assaulting the young woman.

Beatman's inability to recall the assault, or even the face of the victim, would seem to satisfy Hume's "absolute alienation of reason" test for the Scottish insanity defense, as it would likely serve as evidence that Beatman suffered from "a disease as deprives the patient of the knowledge of the true aspect and position of things about him" (37). The facts of Beatman's case arguably present a fact pattern ideally suited to this Scottish articulation; if Beatman is to be believed, he has no conscious memory of committing the crime, which seems to suggest a lack of volition and criminal intent. Beatman ardently disclaims his ability to perform such a heinous crime: "on honour and conscience, this divine creature I never saw before. And if I had, sooner than have offered her any insult, I would have cut off my right hand" (529). This contrast between his avowed unwillingness to "offer her any insult" and the actions with which he is accused suggest that, had he perpetrated the assault, it was the result of an "absolute alienation of reason," which would likely result in a verdict of not guilty by reason of insanity. Additionally, although the Scottish version of the insanity defense does provide the option for reduced criminal punishment, Beatman's asylum confinement suggests that he was not found guilty of a lesser offense through "diminished responsibility," as he wakes up in asylum rather than prison.

This ending in asylum confinement, however, does not seem like an escape. While his financial resources made escaping the criminal justice system an easy process,

such ease of release is not an option in the asylum. The *Blackwood's* version emphasizes the physicality of this confinement, as Beatman finds himself with his “arms pinioned” (85). While this element is not present in *Fraser's*, the mental consequences of confinement in both stories may be more imprisoning, as Beatman is never informed of the reason for his incarceration or the nature of his illness; instead, his surgeons “preserve toward me looks of the most superb mystery, and often lay their fingers on their lips” (531). Beatman’s own father, whose resources presumably allowed him to be released on bail from his criminal charges, is seen here in conversation with his surgeons, indicating his compliance in his son’s continued confinement. While the presence of his father could be seen as evidence of his interest in his son’s recovery (unlike the relations described by Latham who had their unfortunate relatives committed “in order to keep them out of the way” (Spurzheim 158)), his shared confidence with the surgeons and unwillingness to converse with his son casts him as jailer rather than healer. Only Beatman’s impatient attendant, ungraciously described as a “great burly vulgar fellow,”<sup>47</sup> will offer the explanation that “you have droonken away your seven senses. That’s all, so never mind” (531). Beatman does not accept this admittedly unscientific diagnosis, but is unable to pry anything further from the surgeons or his father, who maintain their silent and seemingly indefinite vigil over his cell.

Once again, the two stories diverge in Beatman’s interpretation of his asylum confinement. The *Blackwood's* Beatman, who is unclear whether he was “turned into two men” or was the victim of “a wag and having discovering that he bore an extraordinary personal likeness to me took on him my designation and acted in the manner he did out of

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<sup>47</sup> The *Blackwood's* version reads “rude vulgar fellow” (86).

mere sport” (86), appears convinced of his own justification despite his inability to explain the events of his narrative. He therefore ends his letter claiming that he is “perfectly sensible of the *truth* of the incidents herein narrated,” asking for Hogg’s assistance “in hopes that by publishing them you may induce an enquiry and thereby bring the real incidents to light” (86). This wording indicates Beatman’s hope of a tangible solution, i.e. the discovery of the rakish imposter who can “bring the real incidents to light.” In contrast, the *Fraser’s* Beatman describes the events merely as “quite unintelligible,” and hopes that Hogg’s inquiry “may tend to the solution of this mystery that hangs over my fate” (531), a plea which, given the emphasis in *Fraser’s* on the supernatural and demonic possession, seems comparatively less grounded in hopes of a tangible resolution. Despite these differences, however, both versions of the plea indicate a fear that resolution will not come within the asylum, as well as a potential enhancement of his already latent malady. Once again, this echoes Spurzheim’s depiction of an asylum “calculated to produce insanity” (159). With no forthcoming information about the cause of his confinement, the nature of his malady, or the duration of his stay in the asylum, Beatman’s ‘Strange Letter’ highlights the inability of those accused of lunacy to find procedural recourse for a diagnostic disagreement. Hogg’s publication is the only court to which Beatman can appeal for aid.

### **Conclusion**

Beatman’s fate of indefinite asylum incarceration seems, in this analysis, the fate that Poe’s narrator so desperately attempted to avoid by refusing to be classified as “mad.” While neither story is conclusively resolved – Poe’s narrator acknowledging his crime while pleading with his defense attorney not to invoke the insanity defense,

Beatman desperately writing Hogg as his last course of recourse against his own unspecified diagnosis – Hogg’s story seems to end with a greater sense of finality despite his comparative lack of criminal culpability. Unlike Poe’s narrator, who readily admits his own guilt, Beatman cannot recollect his purported assault of the young woman and believes himself to be innocent. Hogg leaves the question of Beatman’s actual guilt unresolved in both versions of the story, making an evaluation of his actual culpability – whether mentally ill or not – indeterminate.

Although Poe’s narrator probably meets the criteria of the “right-or-wrong” version of the insanity defense, his desperation to avoid its protection, as well as Beatman’s suffering from the effects of what seems to be a successful pleading of the “absolute alienation of reason” version of the defense, suggests two shared “legal fictions” across the different Scottish and English/American interpretations of the insanity defense. First, both stories highlight the possibility that mental illness does not necessarily negate criminal culpability. Poe’s narrator is almost certainly mentally ill, but still seems to persuasively demonstrate moral if not legal guilt, and Beatman’s narrative is too inconclusive to adequately dismiss the evidentiary claims of the young woman or evaluate the cause of his own faulty memory. More importantly, however, both stories deal with the legal assumption that asylum confinement is a lesser punishment than either penitentiary incarceration or execution; instead, the purportedly less punitive alternative may, in fact, be a more harsh fate that Poe’s narrator desperately seeks to avoid and Beatman is unable to escape.



## Chapter Four

“The Situation was Apart from Ordinary Laws”:

Culpability and Insanity in the Urban Landscapes of Robert Louis Stevenson’s London  
and Frank Norris’s San Francisco

In this final chapter, I will explore the connection between the two legal issues previously discussed – inheritance law and the insanity defense – in two texts from the end of the nineteenth century, Robert Louis Stevenson’s *Strange Case of Dr Jekyll and Mr Hyde* and Frank Norris’s *McTeague*. These two novels share a focus on two distinct, yet related, legal issues. Both novels emphasize the transitional nature of property law in urban spaces that, due to population growth and shifting demographics, have stretched beyond the capacity of inheritance law to govern and control, creating fractured urban landscapes. These landscapes, I suggest, mirror the internal conflicts of the stories’ protagonists, whose crimes are presented as the products of their dual natures even though, I argue, their mental states do not negate their culpability under the *M’Naghten* standard of the insanity defense. Instead, both Jekyll/Hyde and McTeague seem to operate under a “culpable” insanity, indicating the presence of guilt and evil despite – or, perhaps, because of – their duality, which is at least partially a product of their post-inheritance law urban environments.

Contemporary criticism of Stevenson’s *Strange Case of Dr Jekyll and Mr Hyde* frequently focuses on the psychological complexity of the narrative itself and of its unfortunate title characters; as Julia Reid has observed, despite “this emphasis on the tale’s allegorical significance which has led to its simplification in popular culture, where the ‘Jekyll and Hyde personality’ has come to symbolize a battle between good and

evil...critics have resolutely rehistoricized the novella, examining how its imagination of psychological disintegration engages with a host of *fin-de-siècle* concerns” (93-94). As Roger Luckhurst and Robert Mighall have separately documented, a reciprocal relationship existed between Stevenson and the early practitioners of psychology in the late nineteenth century. Stephen Arata uses Frederic Myers’s accounts of French psychiatrist Eugène Azam’s two most celebrated cases of multiple personality, ‘Félida X’ and Louis Vivet, to assert, “for most late Victorian thinkers, the multiplex personality was not an aberration but a condition common to us all” (65). Likewise, Nancy Gish frames Pierre Janet’s theory of disassociated consciousness, articulated in a 1906 lecture at Harvard University, as “the most compelling framework for understanding Stevenson’s representation of duality” (1), and Patrick Brantlinger and Richard Boyle link Cesare Lombroso’s study of “mental ‘atavism’” to Stevenson through his friend James Sully (273). While she cautions that “Stevenson’s familiarity with psychological debates about ‘multiplex personality’ is questionable,” Reid similarly notes that “Jekyll’s account resonates powerfully with cases of multiple consciousness, which in the 1870s and 1880s were being explored in French evolutionist psychiatry and discussed for British audiences by Myers and others” (96).

This trend towards psychologizing the *Strange Case* becomes problematic when it turns to the question of criminal culpability. Citing Henry Maudsley’s *Responsibility in Mental Disease*, Reid suggests, “Jekyll attempts to avoid responsibility for Hyde’s murder of Carew...an evasion which taps into vexed debates about criminal responsibility and insanity” (96). Norman Finkel and Steven Sabat have taken this debate literally, arguing that, under contemporary legal and psychological understanding, a

defendant suffering from an analogous “split-brain” madness would not be able to successfully plead the insanity defense. Others have taken it more symbolically and found discordant takeaways: Mighall utilizes Daniel Tuke’s 1885 discussion of “moral insanity” to argue that a figure like Hyde “*is a reversion to a primitive type*” (148), while William Veeder, on the other hand, describes Hyde as an archetype of modernity, representing the phallic aggression of the son against the father where “[p]articular men then direct their longings toward both satisfying and trying to overthrow this Standard so that they can seem to occupy a Throne that is actually only mythical and forever out of reach” (Hogle 165). Depending on the critic, Hyde models mankind’s degenerative past or symbolizes the destructive potential of its chaotic future.

While these critical readings are crucially insightful in many ways, two elements of these arguments require further refinement. First, rather than embracing the question of criminal culpability, Stevenson seems to deliberately sidestep the issue by crafting a character that falls outside the parameters of the insanity defense under the controlling formulation of the *M’Naghten* Rules. Second, Stevenson’s use of the tropes of late nineteenth century Gothic fiction in his depiction of the London cityscape complicates Mighall’s linkage between atavism and modernity as a trope of *fin de siècle* Gothic fiction. On the other hand, Norris’s *McTeague*, although an example of American naturalist fiction rather than the British Gothic, utilizes San Francisco’s urban dynamics in a way that more comfortably depicts the primeval as hostile towards civilization rather than inherently linked with it as in Stevenson’s tale. Much like Stevenson’s Hyde<sup>48</sup>, critics have split in their assessment of the meaning of McTeague’s fall from respected

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<sup>48</sup> Interestingly, both Hyde and McTeague have also been read as phrenological stereotypes of anti-Irish sentiment (Brantlinger 273-74; Dawson 36-38).

dentist to savage murderer; like Mighall and Brantlinger, Donald Pizer links “McTeague’s inherited alcoholism and his inherited criminality” to Cesare Lombroso’s theories of degeneration (“Biological,” 27), while David McGlynn, like Veeder, suggests that modernity is at fault, citing the demands of capitalist San Francisco culminating in McTeague’s “restlessness – not his biological constitution, nor his alcohol consumption – that ultimately incites him to violence” (33). Regardless of where critics place the blame, they seem to agree that Norris’s naturalist aesthetic at least partially absolves McTeague of culpability. Pizer suggests that “the form of the naturalistic novel begins to create an effect of uncertainty, of doubt and perplexity about whether anything can be gained or learned from experience” (*Realism*, 39), and Jonathan Cullick identifies Norris’s naturalism as marked by “a temporal determinism” which “indicates an inability to innovate...McTeague’s lack of autonomy in both repetitive and disruptive situations is apparent” (40).

Importantly, Stevenson’s and Norris’s urban settings are both the products of organic development rather than planned zoning. Land planning in the United Kingdom did not begin in earnest until the Second World War. While some efforts were made in the early twentieth century (such as The Housing and Town Planning Act, 1909 (c. 44)), nineteenth-century efforts to address population sprawl and infrastructure development in the capital were largely limited to individual problems rather than implemented as part of a long-term planned strategy. Similarly, while some cities in the United States – most notably New York City – experimented with forms of zoning regulation in the late 1800s and early 1900s, American zoning was embryonic until the landmark Supreme Court case

*Village of Euclid, Ohio v. Ambler Realty Co.*<sup>49</sup>, which upheld the constitutionality of Euclid’s zoning authority and, as Michael Allan Wolf has documented, led to the nearly wholesale adaptation of similar powers across the country. Outside of an 1880 ordinance banning the operation of laundries in public buildings (later invalidated by the Supreme Court as racially discriminatory)<sup>50</sup>, comprehensive zoning did not gain traction in San Francisco until 1914 (Weiss 312). In a similar fashion to the missing “Indian deed” from *The House of the Seven Gables*, the settings of Stevenson’s and Norris’s narratives both manifest a “psychoanalytic lack of law” (MacNeil 101): the absence of legal guidance in the development of the urban landscape directly reflects the mental turmoil of the stories’ title characters. The growth of both cities, with London’s long divergent boroughs merging into one teeming metropolis and San Francisco’s relatively recent boom, is depicted as organic and fractured rather than planned. In addition to the unstructured growth of these cities, I will argue that the individual property circumstances of the title characters in each of these stories demonstrates a link between urban chaos and the breakdown of inheritance law, which also leads into my exploration of Dissociative Identity Disorder and the insanity defense.

I believe that these two narratives have a great deal to say to each other despite their differences in genre and national origin; as Susan Manning suggests, readings are not entirely determined by “extrinsic grounds of authorship, geographical placement or recovery of historical readers reading, but in the critical potential of a particular practice of comparison” (9). While the previous two chapters have separately considered the legal fictions of land ownership and the arguable “benefits” of the insanity defense, this

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<sup>49</sup> 272 U.S. 365 (1926).

<sup>50</sup> *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

chapter will combine those two areas to discuss the tie between property ownership in an urban setting and the problematic linkage between developments in the insanity defense, psychological diagnoses of Dissociative Identity Disorder, and the relationship between culpability and evil. In this chapter, I suggest that Stevenson's and Norris's linking of urban geography and insanity serves as a "particular practice of comparison" to illuminate two main points. First, I argue that Hyde's and McTeague's psychology are analogous to their fictional cityscapes: Stevenson's London pulls apart binaries to reveal a complex amalgamation of apparent prosperity and ephemeral poverty, while Norris's San Francisco suggests a sliding scale from American, modern prosperity to European, Old World primeval barbarity<sup>51</sup>. Secondly, I demonstrate that Norris and Stevenson use mental illness to sidestep rather than embrace insanity as an excuse for culpability (under, as I will discuss, the new *M'Naghten* standard rather than the versions discussed in Chapter Three) in a similar fashion to their use of setting: Jekyll's body is literally divided in a way that renders the question of culpability legally moot, while McTeague's failed attempts at "civilizing" himself and subsequent reversion to ancient brutality indicate regression rather than transformation.

### **Urban Division: Population Expansion and the Failure of Property Law**

In noting the obvious duality of Stevenson's title character and geography, some critics have gone a step too far by treating both the divided figures of Henry Jekyll and Edward Hyde and Stevenson's London as binary, Janus-like opposites. Linda Dryden, for example, writes of "the contrasts contained within the metropolis that Stevenson exploits in his gothic tale of duality: Jekyll's respectable home and Lanyon's comfortable fireside

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<sup>51</sup> While it is not directly relevant to this analysis, it is worth noting that Stevenson lived for a time in San Francisco, as did Norris in London.

oppose Hyde's Soho residence" (262). This critique was also pervasive amongst contemporary critics of London's divided standards of living. Despite persuasive demographic information, such as Charles Booth's maps, showing an intermingled rather than bifurcated capital, the overlap between rich and poor was, in the words of Deborah Weiner, "lost in a pervasive single image of the East End" (7) in which "the middle class residents of the West End were able in their rhetoric to relegate the population of the East End to the status of foreigner, even a wild race. The East End remained for decades the 'abyss' in the consciousness of outsiders, explored by those with the courage to trespass into the unknown" (9). By tapping into contemporary concerns about the limited housing supply for a massive population and the implications of modifying existing structures to accommodate new residents in crafting his version of this "abyss" for his *Strange Case*, Stevenson's London reflects the intermingled and disparate nature of the actual city rather than an easily divided binary.

By the 1880s, London's burgeoning population had stretched the limits of its housing supply. Gareth Stedman Jones marks the underdeveloped rail networks of the 1880s and the commercial expansion of central London as reasons for this overcrowding; "On the one hand the failure of the railway companies to provide enough cheap and conveniently-timed workmen's trains had prevented a sufficient influx into the suburbs of workmen who could otherwise have afforded to do so. On the other hand the lack of any significant industrial decentralization tied poorly-paid workers to the central area" (217). Sharon Marcus observes that, despite the swelling demand for mass accommodation, "the enormous increases in London's population did not translate into purpose-built apartment houses but instead into the urban and suburban expansion of single-family housing stock"

(83). This was not a mere oversight, but a deliberate choice, as government officials, urban planners, and residents alike viewed the concept of mass housing prevalent in Paris as unbecoming the British capital. As Michael Jenner argues, “the suspicion of flats was also part of the strongly anti-urban sentiments of the Victorians who, although they made London the world’s largest and most powerful metropolis, recoiled from their own creation and sought refuge in a suburban illusion of a lost world of pastoral innocence” (229). This sense of “pastoral innocence” tied into the strong linkage between home ownership and national identity; any “suggestion that Londoners renounce the single-family house as the ideal building type contradicted decades of writing to the contrary – in housekeeping manuals, government documents, architectural journalism, and social commentary. To be English was to live in a house, and to live in a house was English” (Marcus 85). Attempts to alter the status quo by providing mass housing were therefore attacked on both ideological and moral grounds: “In addition to condemning the apartment house as a deviation from national standards, writers on urban housing warned of the dire moral effects apartments had on their inhabitants” (Marcus 87). This moral concern was linked to the perceived importance of the crucial independence of individual families in Victorian England; critics highlighted the “real concern that the communal entrance represented an unacceptable intrusion on the privacy of the family and a potential danger to its morals” (Jenner 229).

The reality, however, did not match the rhetoric. Rather than promoting a city of atomized families occupying single-family dwellings, London’s prevailing architectural preferences instead exacerbated the existing problem. In 1878, architect William H. White “cited topographical and statistical maps showing that although London’s homes

displayed the facades of private houses, internally they were divided into apartments: within central London ‘the great mass of the residents were lodgers. The neighborhood of the Strand is almost entirely rented by tenants and sub-tenants, who occupy a storey, a set of rooms, or a single room’ of a building that was ‘originally a private house’” (Marcus 87). As Lynn MacKay demonstrates, “What this meant in practice was severe overcrowding in the housing stock that remained in central London. The Strand district medical officer noted in 1858 that inmates at Pentonville Penitentiary received 800-900 cubic feet of air in their cells. Rooms in old houses in the Strand district, now the homes of the poor, allowed from 164 to 310 cubic feet of air per occupant” (65). Homes that had formerly comfortably housed one affluent family were now divided between multiple groups, leading to the same problems planners feared would come with purpose-built mass housing. Efforts such as the Artisans’ and Labourers’ Dwelling and Improvement Act of 1875<sup>52</sup> purportedly provided for the demolition of housing deemed to be unsuitable and the construction of new housing, but delegated privileges to individual property owners rather than empowering any governing authority. This instead “caused a rash of speculation in the insanitary areas of London” (Jones 200), making “the most profitable method” of gaining rents “to subdivide and overcrowd” (210-211). Jones cites the Royal Commission’s 1881 report, which documented “there are some good houses, where some good families were brought up, where they used to keep their carriages; they retire into the country, and those houses are let out to a family in each floor, there is a continual outgo of good people, and an in-come of working people” (211). MacKay cites Donald Olsen for the proposition that “Down to the twentieth century most working-class

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<sup>52</sup> 31 & 32 Vict., c. 130.

Londoners lived in homes that had not been built with them in mind; down to the nineteenth century all of them did” (65).

In addition to failing to provide adequate housing for the working class, splitting up formerly unified homes into separate flats was seen to create a sense of fracture and disunity; the same building, formerly a cohesive home for a stabilized family unit, now housed a combination of families, individuals, and commercial enterprises. Some builders experimented with communal forms of housing intended to add an air of fashion and respectability to this apparent architectural necessity, such as the mansion blocks of Victoria Street and the Albert Hall Mansions, “but the notion of collective living did not immediately set a trend” (Jenner 229). The formerly unified houses became what Sharon Marcus has called “the haunted house” (5), exemplifying the failed utility of single-home unity in the British capital. The flight of the wealthy from the core of the capital, as well as the accommodation of the influx of new Londoners at the expense of the old guard, was seen as a symptom of the ‘mass moral and spiritual corruption’ that accompanied the mass population of London (Dryden 255).

Although Henry Jekyll’s residence may initially seem to embody the national ideals of unified home ownership, it in fact vividly demonstrates the divided nature of the city. Stevenson describes his street as “a square of ancient, handsome houses, now for the most part decayed from their high estate and let in flats and chambers to all sorts and conditions of men: map-engravers, architects, shady lawyers and the agents of obscure enterprises” (42). The hallmarks of the neighborhood’s fall from its former glory are largely attributed to its increased accessibility: as the old homes have been broken up and “let in flats and chambers,” the homes have accordingly “decayed from their high estate.”

This cheapening of property value has undoubtedly led to the exodus of the formerly respectable, opening the gate for the influx of “shady lawyers” and other undesirable characters.

In contrast to his new and disreputable neighbors, however, Jekyll’s home is “still occupied entire” and “wore a great air of wealth and comfort” (42). Here, Stevenson’s wording creates the appearance of linking Jekyll’s capacity to maintain sole, undivided ownership of a single-use home with both financial security and social respectability, although the descriptive “wore” belies that impression. It appears irrelevant to Utterson’s narration that the “agents of obscure enterprises” may produce more monetary value in one small room that Jekyll’s experiments generate from his spacious laboratory, or that three “shady lawyers” may live and work in a smaller space than an uninhabited room in Jekyll’s cavernously empty dwelling. Jekyll’s home does not produce, nor does it create; instead, it *wears* the impression of prosperity without doing anything to perpetuate it.

Much as Edward Hyde “wears” the façade of Henry Jekyll as a convenient cover for his crimes, the air of respectability surrounding Jekyll’s home masks its true nature as one of Sharon Marcus’s “haunted houses,” both as his place of business and as his residence. The first role of the house – Jekyll’s home as surgery and laboratory – is limited by his decision to forgo medical practice in favor of radical experimentation. As Lanyon dismissively details, Jekyll has long since departed from treating patients in favor of developing his compound, which Lanyon derides as “a series of experiments that had led (like too many of Jekyll’s investigations) to no end of practical usefulness” (73). This decision means that Jekyll’s practice now treats only a single patient: himself. Similarly,

his compound is not intended for widespread distribution or sale; Jekyll's focus is purely personal rather than medical.

Second, Jekyll's home as residence, while temporarily "occupied entire," seems inevitably destined to follow in the broken-up footsteps of the neighboring houses. As a bachelor, Jekyll has no son or heir upon whom to bestow title to his carefully preserved home. The successors designated in his will are similarly "unproductive," as Utterson is similarly an elderly bachelor and Hyde, of course, has no children. Utterson, despite serving as Jekyll's executor, does not believe his friend's estate planning to be sound. "This document had long been the lawyer's eyesore. It offended him both as a lawyer and as a lover of the sane and customary sides of life, to whom the fanciful was the immodest" (37). The "air of wealth and comfort" of Jekyll's home serves therefore as both a mask concealing a far shadier enterprise than those of his map-engraving and litigating neighbors and the failure to propagate his family line.

The protective mask is also an attempt to rectify Jekyll's physical "unproductivity" by filling the position of a legal heir. Lanyon's disapproval of Jekyll's "unproductive" experiments doubles the "unproductive" nature of Jekyll's home, which cannot be handed down to a son and appears destined for the division into flats endemic to his neighborhood. His experiments, however, also provide the cure for this problem: by creating a younger and separate self, Jekyll is then able to legally transmit his property to Hyde, ordering that "all his possessions were to pass into the hands of his 'friend and benefactor Edward Hyde'" (37). In this regard, Utterson fills the same disapproving legal role that Lanyon does in medicine. His embrace of the "sane and customary sides of life" is not yet an explicit rejection of Hyde as Jekyll's double, as Utterson is not yet privy to

the secret of Hyde's creation, but stems from the circumvention of ordinary terms of property distribution and inheritance.

Importantly, the will is a holographic document of Jekyll's creation rather than a professional testament crafted by Utterson, as the lawyer, "though he took charge of it now that it was made, had refused to lend the least assistance in the making of it" (37). Here, Utterson's refusal to participate in the creation of the will indicates the unsettling ramifications of Jekyll's attempt to circumvent inheritance law by making himself his own beneficiary, although his willingness to execute the terms of the document complicate that resistance. Even though Jekyll has no physical heir, Utterson seems to prefer the legal fiction of conventional intestate distribution by allowing the property to descend to any descendant, no matter how attenuated, rather than to grant it to a suspicious outsider with only a tenuous claim to the estate.

Stevenson inverts the ostentatious façade of Jekyll's home in his depiction of Hyde's Soho hideaway, which both reinforces and rebuts the prevailing presumption of East End decay, which "stood for all that was sordid and frightening in the Victorian city" (Weiner 9). Indeed, on first glance Hyde's Soho appears as blighted as Jekyll's aristocratic square seems affluent. Utterson's viewpoint acts as the narrative window through which Soho is observed, casting the "East End as a foreign land, beset with danger for the inexperienced explorer" (Weiner 8).

Utterson's narrative certainly reflects the voyeurism of the wealthy urban explorer, as he disparagingly notes the "muddy ways," "slatternly passengers," "gin palace," "low French eating house," and "many women of many different nationalities passing out, key in hand, to have a morning glass" that compose the "blackguardly

surroundings” (48) that mark his carriage journey. Utterson’s mode of transportation is crucial to this depiction: until he arrives at Hyde’s home, this is purely a superficial impression derived from observing the streets from the safety of his carriage. As Lynda Nead observes, “The streets of the city were the most visible signs of its progress or degeneration. They were sites of passage, communication and transaction of business, and to many of those involved in the debates about the condition of London its streets were its major defect” (16). These streets were popularly depicted as “ill-smelling, filthy, dark and noisome places...uproar in the streets and courts was also the norm and had various sources. Rows and fisticuffs were, according to contemporary observers, distressingly common” (MacKay 57). Utterson’s voyeurism matches the standard assumptions about the causes of poverty which social reformers such as Charles Booth attempted to correct; as Booth wrote in 1892, “Vice, drink, and laziness, themselves closely bound together, fill also a great place in connection with sickness and lack of work – or we may reverse this and show how sickness and lack of work, and the consequent want of proper food, end in demoralisation of all kinds, and especially in drink” (136). This dirty, decayed, and violent version of the East End seems perfectly calibrated for someone of Hyde’s diabolical character; as Dryden asserts, “Soho remains in a perpetual state of murky twilight, its inhabitants more like specters than solid forms...in Soho, criminal activity is tolerated and flourishes; it is the nature of place, as reflected in the swirling mists that obscure and envelop vice and crime. Hyde belongs here, among the degenerate population who will ask no questions, or turn a blind eye to his activities” (260).

Both the actual East End and Stevenson's Soho, however, are not as monochromatic as they may appear; much like Jekyll's ostensibly refined square, Hyde's neighborhood is more complex than it seems on first glance. Despite the voyeuristic descriptions of urban journalists and explorers, the East End was not a uniform block; as MacKay observes, "London's crowded streets may have been overwhelming, both in terms of noise and sheer numbers of people and vehicles, but it was not a city of anonymous multitudes. Rather, it teemed with small neighbourhoods consisting of a street, a court or an alley or two" (61). This does not mean that the "gin palaces" and "slatternly women" of Utterson's depiction did not exist; rather, the streets created an impression of uniformity that, as Stevenson demonstrated, mask the actual heterogeneity of London's dangerous spaces. Hyde's landlady serves as the initial illustration of this concept, as she "had an evil face, smoothed by hypocrisy; but her manners were excellent" (48). This false impression is matched by Utterson's sojourn into Hyde's quarters, which "were furnished with luxury and good taste" (49). Just as the façade of Jekyll's home obscures the horrible truth of his experiments and creates a false impression of enduring posterity, so too does the disreputable exterior of Hyde's neighborhood mask respectability, wealth, and "good taste" within. This creates a façade within a façade, as the clash between internal respectability and external vice mirrors Soho's proximity to London's fashionable geographic locations; as Mighall argues, "Soho's relation to respectable London resembles Hyde's relation to his more upright twin Dr. Jekyll. Surrounded by the higher districts of May Fair and Pall Mall, Soho's relation to respectable London is therefore a topographical replication of the Hyde within the Jekyll" (151). Additionally, I would argue that the inside of Hyde's lair is indicative

of the deceptively ambiguous nature of the seemingly monochromatic East End, showing the Jekyll within the Hyde as much as it reveals the Hyde within the Jekyll. The preservation of some part of Jekyll within Hyde furthers the “fanciful” nature of the will, which has allowed Jekyll to maintain at least some portion of himself as his own heir.

While its aesthetic differs from Stevenson’s London in crucial ways, the San Francisco that Frank Norris depicts in *McTeague* shares notable similarities with its real analogue and is representational of the inner conflicts between brutality and modernity in the central characters, functioning as what J. Michael Duvall calls “that gray nexus between waste and modern life” (133). *McTeague*, which was inspired by racially charged newspaper accounts of Sarah Collins’s murder at the hand of her alcoholic husband Pat (Dawson 38), is, importantly, subtitled *A Story of San Francisco*. This wording suggests that the city itself is as much of a character as McTeague himself. Norris sets up the restless spirit of San Francisco, embodied in his chosen neighborhood of Polk Street, as emblematic of the uncomfortable fusion between Old World heritage and New World modernity. This forced alliance is exposed as artificial and ultimately subservient to an archaic brutality when pitted against the city’s founding desire: gold.

Due to the initial surge in population from the Gold Rush and its later establishment as the economic capital of the American West, San Francisco’s population exploded from 56,000 in 1860 to nearly 300,000 in 1890 (Robin 10). New San Franciscans came from all over the world; the 1890 census indicated that forty-seven percent of San Francisco’s residents were foreign born (Robin 43). Fred Rosenbaum observes that this made “San Francisco the most ethnically diverse city on the continent, a nineteenth-century Babel. Along with Southerners, New Englanders, and New Yorkers,

virtually every European country was represented. There were Chinese and Latin Americans, Polynesians and South Africans, Australians and Moroccans” (1). Norris was particularly conscious of the city’s role as melting pot, as “early in the writing of *McTeague*, he had thoughts of calling that book *The People of Polk Street*. Almost without exception, its populace would be hyphenate-Americans” (Dawson 39). This diversity was not limited to national identity; as Rob Robin notes, “Heterogeneity also existed among American-born residents of the city. Almost every state in the Union was represented in the Bay Area, thereby accentuating the need for common frames of reference for both restless Americans and uprooted immigrants” (43). This is not to say that racism did not exist in nineteenth-century San Francisco – African-Americans and Chinese immigrants faced particularly acute discrimination – but, among white and Hispanic settlers from disparate national backgrounds, an amalgamating myth was forged that purported to transcend difference. “Unlike San Francisco’s citizens of color who were denied the full benefits of modern city life, the preferred status of European immigrants was rationalized by fabricating a pantheon of California heroes whose deeds warranted the ensuing privileges heaped upon their compatriots” (Robin 46).

That myth, in its essence, was wealth as personified in the city’s founding gold rush. As Gray Brechin observes, “The gold rush, said the city’s first historians, had made San Franciscans racially restless and easily bored: ‘At whatever hazard, most persons here must have occasional excitement.’...Those who came to San Francisco were never content with what they found, but were forever in search of more somewhere else” (206-7). This restlessness was personified in the figure of the Forty-niner, which served as the embodiment of the “pantheon of California heroes” that comprised the mythos of

European- and Hispanic American supremacy. As the century progressed and San Francisco expanded into an economic hub, the nature of this myth transformed as well. As Robin explains, “the classical Forty-niner was totally engrossed in an economic pursuit which was far from being exclusive, specialized, or restricted. Personal economic gain appeared to be the only goal of this character” (14). This early version of the gold digging trailblazer was equally accessible to any willing to brave the journey and start digging. Eventually, however,

a dominant caste of flourishing businessmen preached an elitist ethos of survival of the fittest which, they claimed, was an offshoot of California’s gold rush mentality. As such, these new pace setters of an urban-industrial complex appropriated the Forty-niner as their own private symbol. Many aspects of the business world were incorporated into the new civic image of the Forty-niner. With growing frequency, statues of the California miner stressed financial acumen, business leadership, and an exclusive background. The ordinary miner had shed his unassuming image and donned, instead, the cloak of the highly skilled entrepreneur (Robin 16).

The former mythological symbol of homogeneity despite heterogeneous ethnic and national background, therefore, now reflected a distinct social stratification between the city’s elites and its working class. This also complicated the prevailing notion that, “in both popular thought and public policy, the immigrant experience provided the building blocks for reconciling a free-for-all gold rush mentality with the discipline of the factory. As such, the immigrant psyche was expected to be sufficiently malleable to accommodate all social and economic classes” (Robin 43). While several former immigrants were

among the numbers of those who manipulated the image of the Forty-niner to fit their own financial success, countless others were left behind with the forgotten archetype of the ordinary miner.

Economic differences also contributed to the demographic geography of San Francisco. Class contrasts in neighborhoods were not perceived as diametrically opposed as they were in London's West and East Ends, but there were still notable areas of inclusion and exclusion in the Californian metropolis. While the city's elite constructed elaborate homes among the mansions of Nob Hill, as Mick Sinclair observes, "working people occupied side streets and alleys throughout the city, a 'working-class ghetto' developed amid the crowded wooden tenements" (35). In order to differentiate themselves from the lower classes, both the wealthy and the middle class turned to renovating their homes, as, "by the late 1880s, the move away from the straight-line purity of the early Stick style toward greater elaboration was proceeding apace as Queen Anne homes sprouted in San Francisco's wealthier quarters. Marked by corner towers, turrets, witches' caps, steeply-gabled roofs, and stained glass windows, the Queen Anne style also swapped vertical accentuation for the horizontal" (Sinclair 28). This style of adornment has strong echoes within the broader myth of Old World European superiority, even if that myth is easily exposed as flawed; as Sinclair wryly notes, "despite its name, the Queen Anne style bore little resemblance to the English architecture of that monarch's reign (1702-1714) and resulted instead from a misinterpretation of the work of English architect Richard Norman Shaw" (28). The rich, and the middle class trying to imitate them, focus on the appearance of architectural style,

which derives its value from its association with British monarchy; the intrinsic value of the substance itself is immaterial.

It is in this ambiguous middle ground – Duvall’s “gray nexus” between the rich and poor, the Old World and the New – in which Norris places most of the events of *McTeague*. Norris locates most of the crucial events of the story in what Trina calls “the little world of Polk Street.” Whether purposeful or accidental, the name of Polk Street is tied into the gold fever of both the city’s origin and the characters’ downfall; in his survey of street and place names in San Francisco, Louis K. Loewenstein indicates that the street is named after James K. Polk, eleventh President of the United States, who, “in his last message to Congress, he gave the official imprimatur to the wild, but true, tales of gold in California” (69).

As presented in *McTeague*, Polk Street occupies a middle ground between the moneyed elites and the common laborers. In the initial chapter of *McTeague*, Norris establishes a typical day in the life of the street, which “woke to its work about seven o’clock, at the time when the newsboys made their appearance together with the day laborers. The laborers went trudging past in a straggling file” (4-5). Polk Street serves as a promenade for all of San Francisco’s social classes, as “day laborers,” “schoolchildren,” “clerks and shopgirls,” “their employers... whiskered gentlemen with huge stomachs,” and “the ladies from the great avenue a block above Polk Street” (5) take their turn in the street’s spotlight. While their presence is persistent, none of these groups are ever more than temporary players on the street’s stage, whisked to and from Polk Street by cable car. This intermediary space thus functions as a voyeuristic site of observation – “Day after day, McTeague saw the same phenomena unroll itself” (7) – and

as a purgatorial middle ground between “the great avenue” of the wealthy and the poorer homes of the day laborers. The “people of the little world of Polk Street” find themselves inevitably caught between the two extremes:

When they wished to be proper, they invariably overdid the thing. It was not as if they belonged to the tough element, who had no appearances to keep up. Polk Street rubbed elbows with the avenue one block above. There were certain limits which its dwellers could not overstep; but unfortunately for them, these limits were poorly defined. They could never be sure of themselves. At an unguarded moment they might be taken for toughs, so they generally erred in the other direction and were absurdly formal. No people have a keener eye for the amenities than those whose social position is not assured (73).

A distinguishing feature of the lives of those who actually reside in Norris’s Polk Street is the interconnectivity of work and home, public sphere and private sphere, commerce and domesticity; “it was one of those cross streets peculiar to Western cities, situated in the heart of the residence quarter, but occupied by small tradespeople who lived in the rooms above their shops” (4). McTeague’s dental office doubles as his bachelor apartment (3); when he marries, he and Trina rent a small suite of rooms in the same building to maintain the interconnectedness of dental office and primary residence. Rebecca Nisetich suggests that, through this blurred distinction, “Norris depicts the spread of perversion through the collapse of the boundary between the public workspace and the private space of the home” (10). This living space is not necessarily established as the ideal; although he is contented enough during his bachelor days, after his wedding McTeague dreams that he and Trina will one day have “a little home all to themselves,

with six rooms and a bath, with a grass plat in front and calla lilies...the dentist saw himself as a veritable patriarch surrounded by children and grandchildren” (151). Although, like Jekyll, McTeague’s descendants are nothing more than unrealized shadows, that does not dismiss the practicality of a joined working and living space. Nor is this arrangement a historical anomaly: despite Norris’s attribution of Polk Street’s arrangement as “peculiar to Western cities,” many of the farmers and tradesmen from whom the contemporary residents of the street were descended had plied their trades from their homes. This arrangement, which serves as a microcosmic residual echo of primeval life at odds with the modernity of the sprawling city, is, as Nisetich argues, limited to the “degenerates” or those who will become “degenerate”: “Zerkow, the Polish-Jew, lives in his junk shop, a hovel in the back alley of Polk Street; Maria Macapa, the Polk Street flat’s cleaning woman, lives in the building she cleans...By contrast, Old Grannis – besides Miss Baker the text’s lone important Anglo-Saxon character – owns a ‘little dog hospital’ that is totally separate from his living quarters on Polk Street” (11). As Gavin Jones suggests, Norris’s use of racial archetypes links to his examination of class: “racial hybridity may end with extinction (Zerkow eventually murders Maria, then dies himself trying to escape), but the novel introduces another kind of hybridity – a *class* hybridity focused on a lower middle class that is *mixed* in its relationship to the means of production (petty productive property combined with family labor) and *confused* in its awareness of status” (49).

Due to their decision to combine residence and vocational space, McTeague and Trina seem destined to fall among the “degenerates” as, like the other residents of Polk Street, they try to navigate their inscrutable social position. Initially, at least, Trina is

determined to improve her husband. These efforts are largely external, based on the same ornamentation by which the middle class attempted to mimic their wealthier neighbor's Queen Anne style. Trina succeeds in "inducing him to wear a high silk hat and a frock coat of a Sunday" (147). Due to her influence, McTeague "no longer went abroad with frayed cuffs about his huge, red wrists – or worse, without any cuffs at all... She broke him of the habit of eating with his knife; she caused him to substitute bottled beer in the place of steam beer; and she induced him to take off his hat to Miss Baker" (150). While Trina is focused on her husband's appearance, these changes lead McTeague to what seems to be internal progression. He begins to read newspapers, forming a proper Anglo-Saxon Protestant notion that "the Catholic priests were to be restrained in their efforts to gain control of the public schools," and, "most wonderful of all, McTeague began to have ambitions" (151). McTeague, who began life in the mines, has paralleled the civic Forty-niner in his attempts to recapture himself in the cloak of the successful capitalist. The internalization of this higher ideal makes McTeague's subsequent fall into brutality all the more painful; "Trina had cultivated tastes in McTeague which now could not be realized. He had come to be very proud of his silk hat and Prince Albert coat, and liked to wear them on Sundays. Trina had made him sell both" (225).

Importantly, Norris keeps his narrative tightly focused on the locale of Polk Street for most of the novel, and it encompasses the full spectrum of McTeague's and Trina's relative affluence and poverty. Neither the McTeagues' dream home, located just around the corner from the dental office, nor the successively meaner quarters in which they are forced to live as they fall down the real estate ladder, are in different sections of the city. When McTeague protests the inadequacy of their first new apartment, Trina rebuts his

disapproval by stating, “We’ve looked Polk Street over, and this is the only thing we can afford” (213). It is worth noting that the couple no longer has any reason to remain in Polk Street. Like the day laborers that use Polk Street as a thoroughfare, McTeague now works in a downtown factory, and Trina can paint her animals from any part of San Francisco. Their seeming inability to look outside the confines of Polk Street is indicative of the overriding power of that middle ground between the “toughs” and the “elites.” It seems better to remain on that comfortably unstable ground where an ambiguous social acceptability can be managed than to move elsewhere and confirm their loss of status; they “accept the equation between objects and identity without question, seeing their possession of certain things as a sign of who they are” (Quay 213). Like the claimants to the Ravenswood estate discussed in Chapter Two, they appear unwilling to forsake their sentimental attachment to this particular patch of Earth no matter what consequences may follow. Tragically, it is only as their masks of civility are stripped away, allowing their primitive and barbaric instincts to rise unrestrained, that their world begins to expand. The unemployed McTeague begins his habit of “taking long and solitary walks beyond the suburbs of the City” (262), and Trina’s amputated figures force her to become a janitor at a school on Pacific Street, which, “like Polk Street, was an accommodation street, but running through a much poorer and more sordid quarter” (277). This poor and sordid quarter is also the site of Trina’s last defense, as McTeague murders her in her school for her horde of gold.

Although the urban dynamics of Stevenson’s and Norris’s stories parallel each other in important ways, they do differ in at least one material aspect: their approach towards inevitability. If Stevenson’s London demonstrates a complicated intermingling of

wealth and poverty, frequently living shoulder-to-shoulder and hiding behind a façade of squalor or respectability, Norris's San Francisco embodies a similar fluidity with a different outcome: despite the founding myth of social mobility personified in the classical Forty-niner, the denizens of Polk Street, weighed down by the dueling impulses of New World commercialization and Old World proclivity, can only fall. Hyde's landlady might comfortably grin into old age and Utterson, unlike Lanyon, might survive the shock of discovering Jekyll's true identity, but McTeague, Trina, Marcus, and the rest of the denizens of Polk Street, in fitting with Norris's naturalist trappings, seem destined to slide towards grisly deaths. Hyde and McTeague's brutal rampages are related to these surroundings, but this only partially answers the question of their criminal culpability. While a reading focused solely on their landscapes may blame environmental factors, considering an application of the insanity defense to each character illustrates Stevenson's and Norris's more complex take on accountability in their respective stories, as urban landscapes and institutions are explicitly linked, but not solely responsible, for destabilization.

### **“The Situation was Apart from Ordinary Laws”: Dissociative Identity Disorder and the *M’Naghten* Standard**

As I mentioned in the previous chapter, the House of Lords revised the English formulation of the insanity defense in 1843 following the case of Daniel M’Naghten, a Glaswegian who mistakenly killed Parliamentary secretary Edward Drummond instead of his intended target, Sir Robert Peel. Although the events surrounding M’Naghten’s killing of Drummond are critically important, the *M’Naghten* Rules themselves have taken on a somewhat outsized mythos in legal thought even as their influence on modern

standards of criminal law has waned. Every English and American law student learns in the first year of legal study that contemporary models of the insanity defense stem from the *M’Naghten* Rules. Such a viewpoint is not limited to neophyte lawyers-in-training: *M’Naghten* is viewed as “*the* point of reference for the insanity plea’s history” (Smith 3), and, as James Fitzjames Stephens suggested, prior precedents are generally regarded as “mere ‘antiquarian curiosities’” (Boland 1).

On the afternoon of January 20, 1843, M’Naghten shot Edward Drummond, private secretary to Sir Robert Peel, in the back (Schneider 11). Drummond’s killing “sent shock waves throughout England,” with many believing that M’Naghten’s intended target must have been Sir Robert Peel in an act of Chartist resistance (24). Such an impression was reinforced by M’Naghten’s father, who testified to Sir James Campbell, the lord provost of Scotland, that his son “was a violent Radical, and spoke furiously against the Conservatives of Glasgow, frequently declaring that they and Mr. Lamond, their agent, were constantly after him” (77). M’Naghten’s antipathy towards the Tories, however, seems to be less centered in an appreciation for Chartist philosophy and has more to do with “relatively commonplace” schizophrenia (Rollin 91). As he testified in his initial interrogation at Bow Street Police Court after shooting Drummond:

The Tories in my native city have compelled me to do this. They follow and persecute me wherever I go, and have entirely destroyed my peace of mind. They followed me to France, into Scotland, and all over England; in fact, they follow me wherever I go. I cannot get no rest for them night or day. I cannot sleep at night in consequence of the course they pursue towards me. I believe they have driven me into a consumption. I am sure I shall never be the man I formerly was.

I used to have good health and strength, but I have not now. They have accused me of crimes of which I am not guilty; in fact, they wish to murder me. It can be proved by evidence (Rollin 92).

M’Naghten’s delusions of persecution had been in operation for several years prior to his encounter with Drummond, although his first complaint, originally made to a sheriff in Glasgow, laid blame at the feet of Catholic priests and Jesuits rather than local Conservatives (Rollin 93). From there, the persecutors multiplied to include the Tories “on account of a vote I gave at a former election,” the police, and “all the world” (Rollin 93). The assassination attempt appears likewise to have been planned rather than purely impulsive, as M’Naghten purchased the pistols he used to shoot Drummond in Glasgow in July 1842 (Rollin 93) and several witnesses had noticed him loitering around Downing Street for several days prior to shooting Drummond (Schneider 29). Interestingly, his delusions did not appear to leave any impression on his observers: the keeper of the Privy Council Office questioned him about his purpose and received “a harmless if equivocal reply” (Schneider 29). Even the shooting itself appeared to be calculated rather than the deranged assault of a lunatic. An eyewitness to the shooting testified, “The prisoner drew the pistol very deliberately, but at the same time very quickly. As far as I can judge, it was a very cool deliberate act” (Rollin 93). M’Naghten’s words after the shooting, however, left a rather different impression, as the policeman who apprehended M’Naghten testified that he uttered, “He<sup>53</sup> shall not disturb my mind any longer” (Schneider 12) upon his arrest.

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<sup>53</sup> The policeman was unsure whether M’Naghten said “He” or “She.” “He” could possibly refer to Drummond or Peel, but no possible candidates for “She” have been identified.

Daniel M’Naghten had no legal counsel at his arraignment (Schneider 43). Unlike Nicholson, Hatfield, and Oxford, who had unsuccessfully fired upon royalty and been charged with treason, M’Naghten was arraigned for murder, which meant he was not entitled to have counsel assigned to him (Ormrod 6). He continued to act without representation in his pre-trial appearances, but his father retained the services of Thomas Deans to act as his solicitor (7). Deans and his staff put together an impressive defense team of barristers spearheaded by Sir Alexander Cockburn, a highly regarded barrister who would eventually become Lord Chief Justice of England, to represent him at trial (Schneider 129). Another member of the team, a barrister by the name of Bodkin, had previously represented Edward Oxford at his trial for treason three years earlier (Ormrod 7). Ormrod notes that “the intensity of the interest and concern of those involved in the case seems to suggest that they were activated by something more than the fate of an obscure Scotsman who had murdered an innocent victim by mistake” (7). This team, Ormrod claims, “was organized by what today would be called a ‘pressure group’ of people, seriously concerned to bring about a much-needed reform of the law on insanity in criminal cases” (8). Schneider adds that the reputation of M’Naghten’s defense team, as well as that of the prosecutor, Sir William Follett (then solicitor general of England), “contributed to the enormity and celebrity of the trial” (129).

M’Naghten’s legal team, no doubt influenced by Bodkin’s successful defense of Oxford as well as the positive outcome of *Hadfield*, pursued a similar legal strategy as that followed in those cases (Ormrod 6). It quickly became evident that both the prosecution and defense were focused on the issue of M’Naghten’s sanity, as the facts of the case otherwise clearly pointed towards an uncontested guilty verdict. Anticipating

what was sure to be the defense's strategy of demonstrating that M'Naghten was not legally sane at the time of the shooting, Follett attempted to cast M'Naghten "as a 'sane,' 'competent,' 'inoffensive,' 'studious,' 'sober' individual who, while perhaps eccentric, was certainly not a lunatic" (Schneider 153). To that end, Follett called twenty-six witnesses; with the exception of the immediate witnesses to the shooting and M'Naghten's gaoler, the witnesses were acquaintances of M'Naghten (although not close friends, as M'Naghten appears to have been quite distant in his relationships) who testified that they had "failed to observe anything remarkable or particular about 'his conversation or manner'" (150). Thanks to the Prisoners' Counsel Act of 1836,<sup>54</sup> M'Naghten's counsel were authorized to cross-examine witnesses, a right that Hadfield's counsel had not enjoyed<sup>55</sup> (Hostettler 136) and that Cockburn took vigorous advantage of (Schneider 147).

The strategy pursued by M'Naghten's legal team was a success: just as Lord Kenyon had done in Hadfield's case, Chief Justice Tindal effectively stopped the trial and instructed the jury to deliver a verdict of not guilty by reason of insanity. After Cockburn had concluded presenting medical evidence of M'Naghten's insanity through Dr. Phillips of the Westminster Hospital, Tindal asked Follett from the bench, "Solicitor General, are you prepared, on the part of the Crown, with any evidence to combat this testimony of the medical witnesses who now have been examined, because we think if you have not, we must be under the necessity of stopping the case. Is there any medical evidence on the other side?" Follett answered in the negative, concluded his comments to the jury by

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<sup>54</sup> 6 & 7 Will. 4, ch. 14.

<sup>55</sup> Interestingly, Sir Robert Peel was among the opponents of the Prisoners' Counsel Act, which was debated for fifteen years in Parliament before passage (Hostettler 137).

stating “after the intimation I have received from the bench, I feel that I should not be properly discharging my duty to the Crown and to the public if I asked you to give your verdict in this case against the prisoner” (Schneider 222). In directing the jury, Chief Justice Tindal instructed them that “[i]f he (M’Naghten) was not sensible at the time he committed that act, that it was a violation of the law of God or of man, undoubtedly he was not responsible for that act, or liable to any punishment whatever flowing from that act” (Schneider 223). M’Naghten was admitted to Bethlehem Hospital on 13 March 1843 and remained there until his transfer to Broadmoor Asylum in 1864, where he died the next year (Allderidge 110).

The reaction to M’Naghten being found not guilty by reason of insanity was “immediate and intense” (Ormrod 8). While a few letters to editors suggested that the court had acted correctly,<sup>56</sup> the press coverage of the case ran strongly to the negative. A poem published in the *Times* lamented that the insane – “a privileged class whom no statute controls” – only were “asylum’d a month and a day<sup>57</sup>/Then Heigh! to escape from the mad doctor’s keys/And to pistol or stab whomsoever they please” (Ormrod 9). One of the most vociferous opponents to the outcome of the M’Naghten case was Queen Victoria, who allegedly asked after hearing the verdict “How could he have been found not guilty? He *did* it, didn’t he?” (Schneider 229). She also wrote a letter to Sir Robert

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<sup>56</sup> A letter to the *Times*, for example, indicated that “many of my respectable friends are alarmed at a late verdict, but in my opinion very unnecessarily, since all that the Government has to do is to perform their duty to the country, as pointed out by the act of 39 and 40 George III, cap. 94, by which it is provided that ‘whenever any person charged with murder shall be acquitted on the ground of being insane at the time of committing such offence, it shall be lawful for the Crown to give such order for the safe custody of such person during pleasure, in such place, and in such manner, as to the Crown shall seem fit’” (Schneider 232).

<sup>57</sup> This despite the fact that, as noted above, Oxford was detained in Bethlem for twenty-four years and both Hatfield and M’Naghten died in asylum.

Peel complaining that the judges in *Oxford* and *M’Naghten* “allow and advise the Jury to pronounce the verdict of *Not Guilty* on account of *Insanity* when everybody is morally convinced that both malefactors were perfectly conscious and aware of what they did” (Ormrod 9-10).

The House of Lords immediately intervened. On the same day that Daniel M’Naghten entered Bethlehem Hospital, the Lords began debating whether the insanity defense should be altered. The debate became angry, and Lord Lyndhurst recommended that the House take the opinion of the judges of England by asking them specific questions (Ormrod 10). The Lords agreed and crafted five questions. Lord Brougham stated his hope that the judges’ answers “would lead to more uniformity in the language they used on future occasions in charging and directing juries on this most delicate and important subject...They would no longer indulge in that variety of phrase which only served to perplex others...but they would use one constant phrase” (Boland 1). On 19 June 1843,<sup>58</sup> the judges returned to the House of Lords and gave their answers to all five questions. The answers to Questions 2 and 3<sup>59</sup> (which were answered together) became popularly known as the *M’Naghten* Rules:

the jurors ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the

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<sup>58</sup> 18 C & F 200 (1843).

<sup>59</sup> “2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

3. In what terms ought the question to be left to the jury, as to the prisoner’s state of mind at the time when the act was committed?” (Hansard 732-33).

ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong (*M'Naghten's Case* 1843, 10 C& F 200).

Although the new formulation was not without its critics, the *M'Naghten* Rules was seen by a majority in the House of Lords to fulfill Lord Brougham's desire for a clear and unified approach to the insanity defense (Schneider 248-49). The application of the *M'Naghten* Rules would have had an interesting impact on the man for whom they were named; as Faye Boland has noted, "if this test had been applied at the trial McNaghten would not have been found insane" (4).

There are four key elements to this version of the insanity defense: 1) the defendant's reason must be defective, 2) the source of that defect must be a disease of the mind, and the result must be that the defendant *either* 3) does not know the nature and quality of his actions *or* 4) does not know that what he is doing is wrong. Crucially for this discussion, this formulation was also quickly adopted in American law; as Lawrence Friedman explains, "[t]he right-or-wrong test was formulated in England, but it corresponded to American notions, and it became standard in the United States as well" (*Crime* 143-44). Ormrod states that "the evolutionary process in England and, in consequence, in most of the Common Law countries, such as the United States and the countries of the Commonwealth (but not in Scotland where English law does not apply), was brought to an abrupt and complete halt" (8). By the events of these two stories, both English and California law used *M'Naghten* in evaluating the insanity defense.

Real life attempts to psychologically diagnose a defendant for the purposes of proving legal insanity are heavily disputed, and contemporary debates about the insanity defense question the efficacy of such diagnoses in criminal trials: as Christopher Slobogin has argued, “Any test for insanity, whether it focuses on affective appreciation, volitionality, or irrationality, is a futile attempt to define a particular type of blamelessness: ‘controllessness’” (1237). A literary application of the planks of the defense to characters such as Jekyll, Hyde, and McTeague, on the other hand, is less futile: while Stevenson and Norris both invoke the terminology of dissociative identity disorder as the “disease of the mind” with which their characters are afflicted, they carefully preserve their murderers’ criminal culpability by maintaining cognition and volition.

Psychological approaches to Henry Jekyll and Edward Hyde have focused on the Victorian construct of “multiplex personality,” known colloquially as multiple personality disorder or, in contemporary psychological terms, dissociative identity disorder (DID). The connection between popular psychology and fiction is not accidental: linking Stevenson’s manipulation of the uncanny as anticipatory to Freud’s insistence on the context of the real, Arata asserts that “*Dr Jekyll and Mr Hyde* is a good instance of a Gothic work whose episodes of uncanniness emerge from ‘the world of common reality’” (57). While the body of contemporary research on dissociative identity disorder is relatively minute compared to that of other psychological disorders such as depression and schizophrenia (Ross 112), it carried a prominent place in psychological literature of the 1880s.

While the precise diagnostic measurements of the disease have varied, there is a general consistency between the principles articulated by Azam and Janet and the modern provisions of the Diagnostic and Statistical Manual of Mental Disorders (DSM). The DSM provides four criteria to help medical professionals diagnose dissociative identity disorder:

- 1) Two or more distinct identities or personality states are present in the individual,
- 2) These distinct identities take over the individual's behavior recurrently,
- 3) The "main identity" is unable to recall important personal information, and this inability is too severe to be attributed to mere ordinary forgetfulness, and
- 4) The disturbance is not an outcome of substance abuse or of a general medical condition (300.14).<sup>60</sup>

These criteria are similar in many ways to those observed by Victorian psychologists in the 1880s. Azam's Félicité X, normally "reserved, melancholy, and timid," would often "fall asleep and awake gay, active, and free of her otherwise frequent illnesses...when she awoke in her presumed 'natural' state, it was without memory of the second" (Gish 5). She also became sexually active under the control of her second personality; this came as a complete shock to Félicité, who later discovered that she was pregnant but had no memory of any contributory events (Gish 5). Frederic Myers called this second state "markedly superior to the first...Félicité's *normal* state was in fact her *morbid* state: and

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<sup>60</sup> While substance abuse is an eliminating factor for a DID diagnosis, impaired judgment due to alcohol or other substances can negate certain *mens rea* requirements. Thomas L. Reed, Jr., briefly mentions the possibility of Jekyll's consumption of his compound as part of this "traditional legal defense" (116) before focusing on its role in the debate about alcohol and evolutionary regression.

the new condition, which seemed at first a mere hysterical abnormality, brought her at last to a life of bodily and mental sanity” (37).

As psychological diagnosis is only one part of the legal concept of insanity, even if Jekyll’s transformation into Hyde is the result of multiplex personality or dissociative identity disorder, this does not settle the question of his legal culpability. Although his motive is possibly self-serving, in his own “Full Statement of the Case,” Jekyll expresses the belief that he is not legally at fault for the actions during transfiguration: “Henry Jekyll stood at times aghast before the acts of Edward Hyde; *but the situation was apart from ordinary laws*, and insidiously relaxed the grasp of conscience. It was Hyde, after all, and Hyde alone, that was guilty” (83, emphasis added). Although Jekyll’s statement may scramble to justify his own legal innocence despite a conviction of his own moral turpitude, that analysis may be technically correct.

While Jekyll and Hyde appear to satisfy the first two elements of a dissociative identity disorder diagnosis – two distinct identities that alternate control – the last two elements are more problematic. Depending on the nature of Jekyll’s compound, the fourth criterion – dissociation may not be induced chemically – may take this case outside the realm of DID. Stevenson is not overly detailed on the exact nature of the draught; as Donald Lawler notes, “Stevenson’s emphasis is not on scientific process but rather on those effects of transformation more fantastic than experimental” (250).

The third criterion – loss of memory by the main identity and control by a secondary identity – adds a more concrete complication. In contrast to the loss of recall experienced by patients such as Félicité X, Jekyll explicitly states that this amnesiac effect does not occur when Hyde is in control: “My two natures had memory in common” (85).

While “Henry Jekyll’s Full Statement of the Case” is likely psychologically problematic, it does make clear that both Jekyll and Hyde share memory and awareness; although only one personality takes physical form at any given moment, both sides are equally cognizant and remember the other’s actions. This was evident from Hyde’s first appearance; as Jekyll recalls, “when I looked upon that ugly idol in the glass, I was conscious of no repugnance, rather of a leap of welcome” (81). Although Hyde is physically in control, Jekyll retains his ability to look back through Hyde’s eyes.

It seems evident by the failure of these third and fourth elements that Jekyll’s bizarre experiment has taken his condition beyond the bounds of dissociative identity disorder. Rather than multiple personalities inhabiting a unitary and consistent physical form, something entirely different occurs; as Jerrold Hogle explains, “What makes Stevenson’s best-known *doppelgänger* story such a ‘Strange Case’ is not the reflection of part of the self in a different person (more conventional than ‘strange’ in gothic fiction by 1886). It is the fact that refiguration occurs in and across a single body” (163). When transformation occurs, two entirely separate physical and legal entities are created. These separate selves do not comfortably fit into late nineteenth-century psychological categories; “the gothic relationship between Jekyll and Hyde is more complicated than the Stevensons themselves could have guessed without knowing the twentieth century” (Lawler 249).

These complications are reflected in Lanyon’s and Utterson’s inability to properly diagnose Jekyll’s malady, and also serve as a commentary on their ultimate failure as archetypes of the medical and legal professions respectively. Lanyon initially feuds with Jekyll due to his perception of the latter’s excessive flights of fancy; as he tells Utterson,

“He began to go wrong, wrong in mind” (38). After receiving Jekyll’s letter, he writes “I made sure my colleague was insane” (72). He further describes Jekyll’s notes as “a series of experiments that had led (like too many of Jekyll’s investigations) to no end of practical usefulness...The more I reflected, the more convinced I grew that I was dealing with a case of cerebral disease” (73). For Lanyon, mental illness, while an unfortunate calamity, at least is a rational explanation for his former friend’s irrational behavior. He sees Jekyll’s turn from scientific medical study to “the mystic and the transcendental” (78) as the turn of a distended mind, which fits his rational understanding of human psychology as articulated by his real life medical analogues.

The truth about Jekyll, however, is far worse than Lanyon’s diagnosis of mental illness. Instead, as he observes Hyde transforming back into Jekyll before his very eyes, Lanyon’s reaction is far more akin to that of an asylum patient than one who treats mental illness: “‘O God!’ I screamed, and ‘O God!’ again and again” (77). Lanyon’s shock is not limited to his repeated shriek in the moment; the trauma of beholding the transfiguration is fatal to the esteemed physician. Lanyon’s closing letter to Utterson indicates, “My life is shaken to its roots; sleep has left me; the deadliest terror sits by me at all hours of the day and night; I feel that my days are numbered, and that I must die, and yet I must die incredulous” (77). Unlike a readily diagnosable and easily explicable standard Victorian case of multiplex personality, the Strange Case of Jekyll’s scientifically implausible but undeniably verifiable transformation shocks Lanyon into an early grave – yet he remains “incredulous.” Lanyon cannot cognitively accept Jekyll’s transformation despite his firsthand experience of it. In a sense, he is too grounded in his own sense of the “real” to comprehend the existence of the fantastic and terrible phenomenon that Jekyll has

presented, leaving his solid medical training undone at the altar of the “unscientific balderdash” (38) he had so contemptuously dismissed.

Unlike Lanyon, Utterson is relatively uninterested in the clinical nature of Jekyll’s aberrant behavior, focusing instead on the legal ramifications of Jekyll’s increasingly bizarre choices. His suggestion of Jekyll’s inhibited mental capacity also comes in his professional role, as he decries his friend’s will, which gives all of his property to the enigmatic Hyde, as “madness” (37). Unlike Lanyon, Utterson is given no opportunity in the narrative to voice his reaction to the revelation of Jekyll’s dual identity: although Stevenson does not record Utterson’s reaction to Jekyll’s Final Statement, in a chilling way, Utterson’s utter silence at the end of the novella may speak for itself, allowing Jekyll’s Strange Case to close without a defense from his attorney. Interestingly, it is also important to remember that Jekyll is not Utterson’s only legal client in the story, as he also represented the murdered Sir Danvers Carew: “Carew was my client, but so are you” (50). While Utterson could not have known it until the revelation of Jekyll’s Final Statement, he unknowingly represented both the victim of a crime (as well as, presumably, his heirs) and, as the executor of a will in his favor, his killer, Edward Hyde. This conflict of interest would mean that, ethically, Utterson would need to decline representing either party. His failure – or perhaps inability – to act or comment at the end of the novella, therefore, may additionally signify Utterson’s duty to recuse himself, suggesting an institutional inability to function in the strange circumstances of Stevenson’s Strange Case.

While the implications of Stevenson’s reconfiguration of multiplex personality both have important ties to property law and are psychologically noteworthy, they are

also crucial in determining Jekyll's culpability under *M'Naghten*, which is necessary in determining Jekyll's credibility when he claims that "it was Hyde, and Hyde alone, that was guilty" (83). As stated above, even if Jekyll is deemed to suffer from a "disease of the mind," the insanity defense would only apply if he could demonstrate that he either a) did not understand the nature and quality of his actions, or b) did not understand that what he was doing was wrong. As the narrative plainly indicates, Jekyll and Hyde are not confused about the nature of their actions. Although the crimes are actually committed in the person of Hyde, Jekyll vicariously experiences both his named and unnamed crimes and, at least initially, glories in the respite from his professional and pious face:

I was the first that could thus plod in the public eye with a load of genial respectability, and in a moment, like a schoolboy, strip off these lendings and spring headlong into the sea of liberty... The pleasures which I made haste to seek in my disguise were, as I have said, undignified: I would scarce use a harder term. But in the hands of Edward Hyde, they soon began to turn toward the monstrous (83).

Although Jekyll's initial pleasure dissipates into terror, the nature of Hyde's actions have not changed, but only the degree to which they shock Jekyll's moral sensibility. Both Jekyll and Hyde clearly understand when Hyde's actions have crossed the line between decadent pleasure seeking and criminal degradation. At the murder of Sir Danvers Carew, Hyde "tasted delight from every blow" and "had a song upon his lips," while the post-transformation Jekyll "with streaming tears of gratitude and remorse, had fallen upon his knees and lifted his clasped hands to God" (87).

To satisfy the *M'Naghten* requirements using dissociative identity disorder, the theory behind the defense is that the control personality, or “real” person, cannot be held legally accountable because another personality was in control, and the primary personality was not aware of and cannot remember the alternate’s action. In Jekyll’s case, however, Jekyll has both full memory and full capacity to understand Hyde’s actions, and he acknowledges his own fault: “no man morally sane could have been guilty of that crime upon so pitiful a provocation; and that I struck in no more reasonable spirit than that in which a sick child may break a plaything. But I had *voluntarily* stripped myself of all those balancing instincts... Instantly the spirit of hell awoke in me and raged” (87, emphasis added). Here, Jekyll presents an interesting dichotomy. His actions in the person as Hyde serve as prima facie evidence of his lack of “moral sanity,” which suggests insanity and a lack of culpability. This moral turpitude, however, is due to his “voluntary” and volitional decision to remove his “balancing instincts;” finding Jekyll or Hyde insane would negate the autonomy required to voluntarily strip away those balancing instincts.

While Jekyll would probably not be protected by the insanity defense, it would still be difficult to find a legal doctrine that would allow for his criminal conviction for the actions of Edward Hyde. Ironically, while Jekyll is most likely more criminally guilty than a genuinely insane defendant under *M'Naghten*, he is far less likely to be prosecuted – at least, not in the form of Henry Jekyll. Legally, Jekyll’s “Strange Case” is truly strange. Simply stated, Jekyll and Hyde are not just two distinct personalities like those of Fêlida X, but two completely different distinct physical beings. The “smaller, slighter, and younger” (81) Edward Hyde is so physically different from his counterpart that

Jekyll has the freedom, when he wishes “to doff at once the body of the noted professor,” to drink his compound and “assume, like a thick cloak, that of Edward Hyde” (82). This guise serves a double purpose: initially conceived as a mask for Jekyll to keep him “safe of all men’s respect, wealthy, beloved,” it eventually becomes a shield for Hyde, “the common quarry of mankind, hunted, houseless, a known murderer, thrall to the gallows” (89). As the law has no structural provision to convict a man for the crimes he commits in another physical form, the transforming draught legally emancipates Jekyll from the threat of prosecution despite his likely culpability under *M’Naghten*.

In contrast to the defensive properties of Jekyll and Hyde’s duality, which both conceal Jekyll’s socially unacceptable predilections and protect Hyde from prosecution, McTeague’s split selves do not function as shield or as mask; instead, the docile, civilized version of himself that McTeague presents to the people of Polk Street gives way to an ancient internal brute. As mentioned above, the influence of alcohol makes both the fourth element of a DID diagnosis and *M’Naghten’s* volitional plank problematic. Norris links alcoholism with the loss of volition in his early description of McTeague’s father: “Every other Sunday he became an irresponsible animal, a beast, a brute, crazy with alcohol” (2). Pizer and Dawson both see McTeague’s eventual repetition of his father’s drinking as latent with theories of racially inherited degeneracy, citing Lombroso, Joseph Le Conte, and Max Nordau as likely sources of inspiration (Pizer, “Biological,” 28; Dawson 35). Norris’s narration certainly lends credence to this theory, as well as the racial implications that Dawson identifies, as “below the fine fabric of all that was good in him ran the foul stream of hereditary evil, like a sewer” (25).

It is worth noting, however, Norris's careful distinction that "McTeague never became a drunkard in the generally received sense of the word. He did not drink to excess more than two or three times in a month, and never upon any occasion did he become maudlin or staggering" (241). Similarly, while *M'Naghten* requires either a diminished capacity to appreciate one's own actions or to understand their morality to negate culpability, McTeague's turn to whiskey seems to magnify rather than inhibit his faculties. Norris writes, "There was an activity, a positive nimbleness about the huge, blond giant that had never been his before; also his stupidity, the sluggishness of his brain, seemed to be unusually stimulated" (234). The whiskey creates the same awful vivifying effect on the night that McTeague murders Trina: "He was drunk; not with that drunkenness which is stupid, maudlin, wavering on its feet, but with that which is alert, unnaturally intelligent, vicious, perfectly steady, deadly wicked" (293). The violence that becomes endemic to McTeague's formerly good nature also grows independently from his drinking: "He drank no more whiskey than at first, but his dislike for Trina increased with every day of their poverty, with every day of Trina's persistent stinginess" (243). Assigning McTeague's escalating dissatisfaction with enduring poverty seems to reinforce McGlynn's claim that McTeague's brutality is related to financial stress rather than alcoholism. As the façade of his civilization is stripped away, McTeague relapses into the patterns of his old life: "The instincts of the old-time miner were returning. In the stress of his misfortune McTeague was lapsing back to his early estate" (263). His "degeneracy" is neither purely genetic nor a byproduct of consumer culture. Instead, both the turn to whiskey and the fall from financial grace serve as catalysts for a pre-existing internal fracture.

These catalysts serve to exacerbate the tension between McTeague's two dueling selves. Although they are not assigned separate identities in the same way that Stevenson differentiates between Henry Jekyll and Edward Hyde, these two sides of McTeague are all the more pronounced for their proximity. The dueling selves first clash during Trina's initial visit to McTeague's dental parlor, as "the animal in the man stirred and woke; the evil instincts that in him were so close to the surface leaped to life, shouting and clamoring" (24). Interestingly, this moment of crisis is triggered neither by drink nor by economic collapse, but by something far more primal: McTeague's sexual attraction to Trina.

Immediately after rising to the surface, this animal finds itself fighting "a certain second self, another better McTeague rose with the brute; both were strong, with the huge, crude strength of the man himself" (24). Norris's wording here is particularly pertinent to an evaluation of dissociative identity disorder. While two distinct personalities are required for a diagnosis, here both personalities are labeled with the same name: the "animal" and the "another better McTeague," both of whom share McTeague's strength, which is represented as physical throughout the novel, in an entirely internal conflict. While this episode would appear to satisfy the second plank of the DID diagnosis – the two sides struggle for control – neither side seems to be sufficiently distinct to meet the requirements for a separate identity. Instead, the "animal" is McTeague without the shackling bands of civilization and propriety; "long dormant, it was now at last, alive" (25). When, after his fall from Polk Street, the whiskey "roused the man, or rather the brute in the man, and now not only roused it, but goaded it to evil" (242), this is more a matter of regression than of transformation. McTeague's brute is the

same “animal” from the dental parlors, not a new byproduct of whiskey or commercial failure, and he seems to retain both volition and memory after succumbing to his baser impulses; like Jekyll, he has “voluntarily stripped” himself of the ability to fight back, only against a primeval beast rather than an emblem of modernity.

McTeague’s embrace of the beast within culminates in his flight into the wilderness of Death Valley. In contrast to the novel’s San Francisco, which “is almost photographically true to the San Francisco Norris knew,” the fictional Death Valley is far larger than its real counterpart. Mohamed Zayani observes, “in contemplating Norris’s desert, however, the reader experiences not only a sense of endlessness fostered by the absence of geographical markers, but also an exaggeration of space. It is interesting to note, along with Donald Pizer, that Norris ‘broadens Death Valley to over three times its width.’ The exaggerated representation of the desert is all the more intriguing given the author’s commitment to realist representation, for Norris, much like other naturalists, fully researched his novels” (102). Death Valley’s magnified immensity, along with the foreboding mountains that surround it, resonate with McTeague’s degeneration: “the still, colossal mountains took him back again like a returning prodigal, and vaguely, without knowing why, he yielded to their influence – their immensity, their enormous power, crude and blind, reflecting themselves in his own nature, huge, strong, brutal in its simplicity” (304). While the word prodigal generally reflects a return to grace from chaos, McTeague’s return suggests the opposite: the brute cannot thrive in civilization, and requires a space more suited to its nature. This open wilderness is the culmination of the freedom the newly-awakened McTeague sought to find on his forays into San Francisco’s suburbs, as “the vast spaces that attract the dentist at the end of the novel

stand out in a marked distinction to the claustrophobic spaces he has to endure while living with the stingy Trina” (Zayani 99). McTeague’s physical move into the wilderness parallels his internal descent back into primeval chaos. The gnawing sense of the primeval that McTeague has spent the novel trying to subdue is only allowed to rage away from Polk Street, and it reaches the height of its power after he has left the boundaries of civilization behind and entered the desert of his eventual demise. Although McTeague’s descent is not marked by a protective physical transformation into another being, his mental descent evinces a similar form of culpable insanity to Jekyll.

Just as McTeague vividly exemplifies the struggle between dueling selves in San Francisco’s urban spaces, Trina’s internal struggle between economic frugality and sexual desire similarly models an urban tendency towards dualistic entropy. Although as a murder victim rather than perpetrator Trina is not subject to criminal prosecution, her character’s entropic schism mirrors that of her murderous husband. When she discovers that she has won a five-thousand dollar lottery prize, her abilities as “an extraordinarily good housekeeper” (106) become immediately apparent through her preternatural capacity to stretch and save money. Norris attributes this ability to the fact that “a good deal of peasant blood still ran undiluted in her veins, and she had all the instinct of a hardy and penurious race – the instinct which saves without any thought, without idea of consequence, saving for the sake of saving, hoarding without knowing why” (106). Trina’s saving is both genetic and intuitive, subverting conscious thought: although, like McTeague, Trina is an acclimated denizen of modern San Francisco, the instincts of a buried primeval self are still apparent in her biological makeup.

Throughout her courtship and the early stages of her marriage, Trina is able to keep “the instinct of a hardy and penurious race” in check. She even countermands her own desire to save by buying McTeague the large tooth sign of his dreams. However, as their financial situation becomes worse, she too degenerates; as McTeague gives himself to the Brute within, Trina retreats into her internal Peasant. This instinctual retreat is marked by its force: “it was not mere economy with her now. It was a panic terror lest a fraction of a cent of her little savings should be touched, a passionate eagerness to continue to save in spite of all that had happened” (215). What could previously be justified as a matter of wise budgeting has devolved into full-blown miserliness. Trina is no longer capable of giving, as evidenced by her refusal to grant McTeague “even a nickel for carfare” (234). Walter Benn Michaels describes “her saving as a kind of spending,” characterizing this miserliness “not as an absolute refusal to spend any money but as an absolute unwillingness to forgo the pleasure of having ‘her money in hand,’ even if that means paying for it” (“The Contracted Heart,” 106). While Trina’s reserve of currency increases, so too does her growing poverty and misery. Unlike Olive Schreiner’s negative characterization of “a condition of more or less complete and passive *sex-parasitism*” (77) in which a modern woman “bedecked and scented her person” (81) as proof of her economic prowess through marriage to a financially stable partner, Trina’s unkempt appearance and haggard features proudly witness of her “money in hand” hidden in the chest beneath her wedding dress.

As powerful as her instinctual penury is, Trina’s sexual relationship with McTeague complicates this urge. As Charlotte Perkins Gilman had indicated, the most common method of financial support for a woman in the late nineteenth and early

twentieth century was through sex, whether through the institution of marriage or other means: “woman’s economic profit comes through the power of sex-attraction...the female gets her food from the male by virtue of her sex-relationship to him” (63-64). To Gilman, this was a condition of social conditioning rather than natural construction, as humans “are the only animal species in which the female depends on the male for food, the only animal species in which the sex-relation is also an economic relation” (5). Schreiner argued that these “social conditions tend to rob her of all forms of active, conscious, social labour, and to reduce her, like the field-tick, to the passive exercise of her sex functions alone” (78). Life for a woman in such a relationship, according to Schreiner, becomes “merely the gratification of her own physical and sexual appetites, and the appetites of the male, through the stimulation of which she could maintain herself” (82). To Gilman and Schreiner, while self-interest may not be the only purpose of sexual intercourse, its ability to create emotional ties that would lead to financial stability is its primary incentive in popular discourse.

However, Trina’s sexual relationship with McTeague does not promote economic gain; in fact, she ultimately loses her fortune, her ability to earn a living, and her life because of her husband. Instead, every aspect of her relationship with McTeague, from courtship to marriage to her untimely death, is a result of naturalistic determinacy superseding both her “peasant” instincts and her conscious choice. Just as her unconscious figure sitting in the dentist chair had awoken the brute within McTeague, that same brutal attraction has a similar effect on Trina: “McTeague had awakened the Woman, and whether she would or not, she was now his irrevocably...She had not sought it; she had not desired it” (70-71). Like McTeague’s brute, this alternative side of Trina

“acts from instincts which are brought to the surface and intensified by chance occurrences” (Dillingham 170). This Woman – with a capital W – so overpowers Trina that the possibility of a sexual relationship with McTeague outweighs the potential dangers that she notices but is unable to heed. Even as the relationship deteriorates and McTeague becomes progressively more brutal and abusive, “in some strange, inexplicable way this brutality made Trina all the more affectionate; aroused in her a morbid, unwholesome love of submission, a strange, unnatural pleasure in yielding, in surrendering herself to the will of an irresistible, virile power” (244). This “irresistible, virile power” is not complete, but its draw is undeniable. While Trina maintains her frantic desperation to save money, her physical intimacy through masochism leads her to submit to everything else: she is willing to bear any of the physical or emotional indignities heaped upon her as long as she can maintain both her marriage and her monetary reserves.

The discordant relationship between these two unconscious sides of Trina – her miserliness and her masochism – comes to define her as she deteriorates. Trina’s emotions, Norris writes, had “reduced themselves at last to but two, her passion for her money and her perverted love for her husband when he was brutal. She was a strange woman during these days” (244). It is worth noting that Norris only describes Trina’s “perverted love” for McTeague with the qualifier “when he was brutal;” McTeague’s degenerate Brute, it seems, continues to be the sole power that awakes the Woman. Michaels argues that Trina’s actions are perhaps more conscious than Norris might acknowledge, indicating that Trina has effectively formed a “masochistic contract” with McTeague, i.e. “a contract which produces enslavement by choice and is available only

to the free” (“The Gold Standard,” 509). In Michaels’ reading of *McTeague*, “these perversions normalize each other; the desire to own is not only compatible with but is fulfilled by the desire to sell and so be owned” (“The Gold Standard,” 509). Trina’s first instinct, however, seems to refute this reading. Although Trina as “Woman” gives almost all of herself in submission to McTeague, she cannot overcome her “peasant” lineage and refuses to give up her gold. Instead, she fights to the death in a vain attempt to protect her assets, leaving both her primeval desires and her conscious wishes unfulfilled. Trina does not need to leave San Francisco for the wastes of Death Valley to confront her demons and fall before them; in the urban space of Polk Street, Norris creates in her a primeval force as powerful and domineering as the one that lurks in *McTeague*. While Trina’s mutually exclusive impulses do not lead her to similar physical violence, the emotional and psychological toll of her contradictory miserliness and masochism leave her ultimately destroyed without satisfying either.

### **Conclusion**

In both of these texts, these dual entropic forces of modernity and the primeval allow us to consider how the alignment of post-traditional inheritance urban demographics with the insanity defense reveals an important overlap in Stevenson’s use of Gothic tropes and Norris’s naturalism. Under the versions of the insanity defense available in late nineteenth-century London and San Francisco, neither *McTeague* nor *Jekyll/Hyde* would likely have been able to plead not guilty by reason of insanity for the murders of Trina and Sir Danvers Carew. However, the cityscapes of these stories suggest that both characters operate under a sort of “culpable insanity,” a madness that does not diminish their criminal responsibility and which is inextricably linked to their

urban landscapes, which have become estranged from traditional protections of property law. Stevenson depicts a London in which, both architecturally and individually, traditionally dichotomized attributes of good and evil coexist uneasily, and supposed aristocratic bastions of legality and virtue are subject to modern decay. Norris's San Francisco, meanwhile, showcases a supposed amalgamation of the positive virtues of the Old and the New World stripped bare by the realities of commercial failure, genetic and national heritage, and degenerate reversion. Both stories ultimately end in fracture as a result of the dual entropic forces of modernity and the primeval, suggesting a shared transatlantic tendency towards metropolitan entropy.

## Conclusion

In Chapter One, I suggested that a transatlantic model of literary and law studies could, in addition to providing an instrumental framework to more accurately frame historical and cultural contexts for textual analysis, provide a humanistic analysis of commonalities that transcend disciplinary and historical borders. In this thesis, I have endeavored to demonstrate the existence of common literary-legal threads in Scottish and American texts across different literary periods and dealing with common legal fictions in both national versions of inheritance law and the insanity defense. I will conclude by summarizing what I think those commonalities are and articulating what I see as the next step in continuing this project.

First, I hope that I have demonstrated the presence of unifying themes across time periods and genres that are traditionally classified as disparate in academic parlance. The defined canonical boundaries of “Scottish Romanticism,” “British Victorian,” and “American Naturalism” that divide academic specialization may be useful tools for determining the content of textual anthologies or organizing course modules, but something is lost by restricting common readings to authors who may share nothing more than their nation of origin and relatively proximate birth dates. Frank Norris and Walter Scott may have little in common, and it would be a rare course that would read *The Bride of Lammermoor* alongside *McTeague*. As my analysis suggests, however, while both authors are writing in their own unique national and legal contexts, their works, as well as those of Nathaniel Hawthorne, Robert Louis Stevenson, and other authors not analyzed here, share a similar conception of the problematic nature of inheritance law that transcends these temporal barriers. These authorial connections hopefully echo the

“shared concerns and stylistic introductions” (33) described by Susan Manning in *Poetics of Character*, and I hope that the work I have presented in this thesis is merely the beginning of a series of similar literary introductions.

I also hope that I have demonstrated that, just as generations of critics have used literature to explore legal issues, the law can be a useful mechanism for gaining literary insight. While the haunting narratives and visceral terror in “The Tell-Tale Heart” and “Strange Letter of a Lunatic” do not require a background in criminal law to appreciate, hopefully my analysis has shown that an understanding of the complexities of the insanity defense can unravel additional layers of meaning within the stories.

Similarly, I suggest that the “legal fictions” I have proposed in each chapter – the myth of property ownership, the potential disincentive against the insanity defense, and the possibility of culpability despite insanity – link in to the larger “legal fictions” of Scottish and American legal and political independence. While I have partially explored this larger claim in political and legal contexts, I am not interested in demonstrating the degree to which Scots law fully maintained its independence from English legal structures or whether American reliance on English precedence impacted its political development. Instead, I would suggest that the commonalities across the Scottish and American authors evaluated in this thesis indicate a larger connection, one that does not necessarily need to be explored in terms of dependence. Instead, I hope I have demonstrated that these shared concerns indicate underlying issues with questions of property and criminal insanity that cannot be fully resolved in legislative committees or judicial chambers. The fictional spaces provided by these authors offer a way to partially

separate these issues from questions of national sovereignty or political process, focusing instead on cross-cultural commonalities.

In closing, I will mention a few of the additional “shared concerns and stylistic introductions” that I hope to make as this project develops beyond the thesis stage. As mentioned previously, I came to the University of Edinburgh with a sprawling outline of literary and legal connections that Professor Manning helped me strip down and condense into this immediate project of exploring six authors – three Scots and three Americans – in pairs focused around roughly similar texts. In that necessary winnowing process, I had to sacrifice the consideration of additional related legal areas, the examination of a few other Scottish and American authors, and, perhaps most crucially, the exploration of English authors in concert with their Scottish and American counterparts. While this Scottish-American comparison has, I hope, been fruitful both for evaluating the distinct political and legal fictions of independence from English governance and common law and exploring the authors I have chosen, I do believe that additional insight would be gained by triangulating these readings with representative English authors who share similar concerns. In developing this project further, therefore, I will hopefully add to my work here by working in English authors such as Charles Dickens, Mary Shelley, and Thomas Hardy in Chapters Two, Three, and Four respectively. I also hope to pursue a similar triangulation in two new chapters: one focused on prison and asylum confinement at the end of the nineteenth century in the works of Charlotte Perkins Gillman, Margaret Oliphant, and Oscar Wilde; and one exploring transatlantic dystopias as dislocated sites of property and criminality in the works of J.M. Barrie, Arthur Conan Doyle, and Mark Twain.



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