DEVELOPMENT OF THE LEGAL PROBLEM NOVEL FROM

CALEB WILLIAMS TO IVANHOE AND MARY BARTON

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DEDICATION

This thesis is lovingly dedicated to my mother, Henriette Pummill, who instilled in me the love of literature and law, and a hunger for justice. She has been my most ardent cheerleader and has always believed in my dreams.
I conceived that, my story, faithfully digested, would carry in it an impression of truth that few men would be able to resist; or, at worst, that, by leaving it behind me when I should no longer continue to exist, posterity might be induced to do me justice, and seeing in my example what sort of evils are entailed upon mankind by society as it is at present constituted, might be inclined to turn their attention upon the fountain from which such bitter waters have been accustomed to flow. or delete this page plus the following section break.

—William Godwin, *Caleb Williams*
ABSTRACT OF THE THESIS

Development of the Legal Problem Novel from
*Caleb Williams* to *Ivanhoe* and *Mary Barton*

by
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This thesis identifies the “legal problem novel” which was created and developed in England during a period of political revolutions in neighboring Continental Europe from 1789 to 1848. The first legal problem novel, William Godwin’s *Caleb Williams* published in 1794, employs two narrative tactics which became the hallmark of the genre: a forensic presentation of the facts of legal cases, and the portrayal of legal systems that are alternatives to the government’s system. Godwin also presents the reader with a fact relating to the legal case in the novel which is unknown to the court.

In 1820, Walter Scott published the legal problem novel *Ivanhoe*, set in Medieval England when Richard I united the Saxon and Norman people and founded the common law. Scott uses Godwin’s narrative techniques: presenting a witch trial and portraying five competing legal systems operating in England at the same time. *Ivanhoe* establishes that, just as English society changed a great deal between the Middle Ages and the nineteenth century, the common law could, and should, be reformed to meet the needs of the modern British society.

In 1848, Elizabeth Gaskell published the legal problem novel *Mary Barton*, using Godwin’s forensic narrative techniques of presenting the facts of a criminal murder trial against an innocent man; informing the reader of an important exculpatory fact that is not presented to the court; and offering the possibility of an alternative legal system based on religious principles of rehabilitation and forgiveness. Gaskell advocates for capitalist masters to take responsibility for the welfare of their workers and to seek legislative reforms.

*Caleb Williams*, *Ivanhoe*, and *Mary Barton* sought revolutionary changes in the law. Although they use similar narrative tactics, the novelists approach the subject of an unjust outdated legal system in different ways. The three novels elevate the novel form beyond the mere story telling function to intervene in society and advocate for legal reform.
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INTRODUCTION

In the 1950s, literary critics identified a series of novels published in the 1840s and 1850s as “social problem” novels because they deal with the social problems in British society arising from industrialization (Guy 3). Such novels address a variety of social problems including working conditions, the plight of women, and poor living conditions. A sub-set of these social problem novels portrays abuses in the legal system as broadly understood to include both the legislative process and the administration of legal cases in the courts. I focus on this sub-set of the social problem novel which I identify as the “legal problem” novel. The legal problem novel originated in the late eighteenth century (much earlier than the Victorian social problem novels) with the publication of William Godwin’s *Things As They Are or, the Adventures of Caleb Williams* (hereinafter referred to as *Caleb Williams*). Sir Walter Scott and Elizabeth Gaskell developed the legal problem novel over the following approximately fifty years. The legal problem novel was created during a period of political upheaval in Continental Europe from the French Revolution in 1789 to the Revolutions of 1848, and these three novelists used the novel form to weigh in on the public debate about the political and legal changes that were needed for Britain to avoid a similar uprising. Godwin, Scott, and Gaskell thus elevated the novel from a form of entertainment to a tool for bringing about social change.

Identifying *Caleb Williams* as the first legal problem novel is a different approach than that taken by others who have analyzed it. Kenneth W. Graham observes: “Historians of narrative fiction acknowledge the importance of *Caleb Williams* in the development of the detective novel, the political novel, the philosophical novel, the psychological thriller, and the novel of pursuit” (2). To this impressive list of firsts, *Caleb Williams* is what I will call the first “legal problem” novel, a category not previously identified. Critics have recognized the legal themes in the novel, but not its status as a new type of novel. Graham analyzes a variety of political stands that Godwin espouses in both *Political Justice* and the narrative of
Caleb Williams. Although he recognizes that the novel portrays the “exploitation in laws themselves as well as in their administration,” (24) Graham focuses not on Godwin’s attack on the legal system but on his “insight into the power of ideology” as imposed by the government on citizens in order to induce compliance with laws (197). Quentin Bailey takes this idea further, showing how Caleb Williams expresses Godwin’s concerns about the development of a state where police officers, gaols,¹ and “wanted” narratives are used to coerce citizens to obey the law because they believe they are under surveillance. He cites Michel Foucault’s Discipline and Punish and the similarity of the surveillance of Caleb Williams to the image of Jeremy Bentham’s panopticon. Bailey concludes: “The prisons from which Caleb escapes and the constables whom he has to outwit are only the outward signs of a pervasive system of social control; the real power lies in the ability of those in control—in this case, Falkland—to manufacture consent among the populace through a sophisticated and integrated use of prisons, police, and literature” (547). Jonathan Grossman notes: “Caleb Williams helped shift the novel as a form away from the genre of criminal biography and, . . . in so doing it produced a new juridical conception of character and narrative form” (37). Grossman recognizes the forensic form of the novel and its influence on future novelists, but stops short of analyzing the novel—as I do in this thesis—as a critique of specific laws and legal procedures extant in England at the time it was published, and as undermining public support for the law and its institutions.

Although Caleb Williams is the first legal problem novel, Godwin is not the first novelist to refer to legal matters in a novel. Earlier novelists can be distinguished from Godwin because they did not use the narrative form of the novel to question the law and legal procedures or to induce readers to seek reform. Daniel Defoe published Moll Flanders in 1722, about a woman who turns to a life of crime. Unlike the main character in Caleb Williams, the lead character, Moll, is guilty of the crimes for which she is convicted and Defoe does not embark on a trial of the legal system. Moll Flanders is a precursor to a group

¹ “Gaol” is the British spelling of the word “jail.”
of novels identified as “Newgate novels” which includes *Jack Sheppard* by William Harrison Ainsworth published in 1839–1840. Newgate novels, named after the Newgate Prison in London, focus on the exploits of the criminal. In *Caleb Williams*, the narrative chronicles Caleb’s many brushes with the law and his two escapes from gaol, which is similar to the Newgate novels, but the main focus of the novel is the injustice done to Caleb and other lower class individuals by the legal system.\(^2\) Grossman observes “Godwin took up the genre of criminal biography in order to repudiate it,” which is different from Newgate novels (48).

Another novelist who incorporates legal issues in novels prior to Godwin, is London’s chief magistrate at the end of the eighteenth century, Henry Fielding. The most notable of Fielding’s novels involving legal issues is *Amelia* published in 1751. Although the character Booth in *Amelia* is held in prison for a crime he did not commit, the novel is more concerned with the conditions in the prison. John C. Stephens proclaims *Amelia* is “one of the first novels-with-a-purpose in England, as it was Fielding’s intention to foster reform by revealing the deplorable conditions of the time in regard to” the “judicial maladministration by incompetent magistrates” (104). In contrast to *Caleb Williams*, *Amelia* does not focus attention on legal injustice for the purpose of obtaining legal reform. Fielding acknowledges that there is a problem with the courts, but he defends the law and legal system, contending the problem is that lay magistrates are deciding legal issues without the benefit of knowing the law (*Amelia* 7). Fielding was concerned about the rising crime rate in London and sought reform of the police force in order to more efficiently apprehend criminals and try them.\(^3\) In contrast, Godwin’s narrative about an innocent young man attempting to avoid an unjust legal system raises the question of whether the people being dubbed “criminals” have really

\(^2\) Caleb Williams’s tale is strikingly similar to the account of the real life prisoner named Jack Sheppard in *The Malefactor’s Register; or the Newgate Calendar*. An excerpt of this document is in Appendix C to *Caleb Williams* (508–15). The important difference between Jack Sheppard and Caleb Williams is that Sheppard was guilty of crime and Williams is not.

\(^3\) Fielding wrote the treatise *An Enquiry into the Late Increase in Robbers &c.* in 1751, warning the public that it was necessary to make it easier to obtain convictions in criminal cases. He observes that England’s legal system is one “whose Forms of Correction are extremely slow and whose Punishments are the mildest and most void of Terror of any other in the known world” (2).
done anything wrong. *Caleb Williams* is the first English novel to portray both laws and legal procedures in a critical light, for the purpose of destabilizing public support for the legal system, and this earns the novel the distinction of being the first “legal problem” novel.

In the prototype of the legal novel, *Caleb Williams*, Godwin employs specific narrative tactics which are also used by Scott in *Ivanhoe* and Gaskell in *Mary Barton*. These narrative tactics involve portraying the facts of legal cases forensically and portraying legal systems that are alternatives to the government’s system. Godwin portrays legal cases and presents facts relevant to determining which party should prevail in each case. He does so in a manner similar to the presentation of evidence in a trial (“forensic”) (Grossman 57). Godwin’s choice of a forensic presentation of facts reveals a confidence in the idea that a system of reviewing evidence will lead to a determination of the truth, a belief which is at the heart of the adversarial legal system. While accepting the premise that a forensic approach will lead to truth, Godwin rejects the conclusion that this process leads to truth in trials conducted by the legal system, because the legal system is flawed and biased. In *Caleb Williams*, five legal cases are presented in which wealthy litigants are able to use legal procedures to harass opponents and thwart fact-finding and justice. Three cases never make it to trial and, in the two cases where there are trials, the judges fail to consider all the evidence. The legal system shows a preference for landowners which permeates both the types of laws that exist and legal procedures. Godwin shows how the law is merely an extension of a political economy that privileges landowners.

Godwin undermines the authority of the legal system by raising questions about notions of natural justice that underly the common law system. The common law consists of a series of legal decisions by judges and relies on the doctrine of *stare decisis* which: “assumes that court decisions have been reasonable, that what was reasonable in one century may be reasonable in another—even though in the meantime the most revolutionary social and political changes may have occurred” (Hogue 8–9). Under this model, judges do not make law; they declare what is an eternal universal or natural law. *Caleb Williams* demonstrates that judges make decisions without all the necessary information and are biased in favor of wealthy parties. Thus, laws are not derived from some mystical infallible source, but are of human design and therefore fallible. The novel shows how the legal system privileges private property ownership by comparing it unfavorably to an alternative set of
laws governing the band of robbers which subvert private property ownership to notions of equal distribution of property.

Godwin subjected himself to great personal risk when he published the first legal problem novel. He wrote a preface in 1794 which he withdrew from the first publication because “it was feared that even the humble novelist might be shown to be constructively a traitor” (Caleb Williams 56). Godwin notes in this preface that the political climate at the time Caleb Williams was published was in turmoil: “While one party pleads for reformation and change, the other extols in the warmest terms the existing constitution of society” (55). Writing during a period when those calling for reform faced trial for treason, “as well as [after] the French Revolution,” Godwin has a stake in the issues he raises in Caleb Williams, because he is “an author both fearing and facing the possibility of a criminal trial” (Grossman 52). Godwin acknowledges that his novel is an “invention” that takes a position on a matter of “inestimable importance” and explains that he hopes the novel will reach “persons [to] whom books of philosophy and science are never likely to reach” (Caleb Williams 55). Thus, Godwin is aware that Caleb Williams differs from the novels that have come before it because, rather than tell a nice story allowing readers to escape the troubles of every day life, its purpose is to inform readers of the injustices occurring in their society.

Twenty-six years after the publication of Caleb Williams, Walter Scott published the legal problem novel Ivanhoe. Ivanhoe is part of the Romantic literary movement which portrayed medieval stories as a means of critiquing contemporary nineteenth-century social issues. In Scott’s time, reformers sought to correct defects in the common law which had been developed under the monarchy, by statutes enacted by Parliament. John R. Reed notes: “A strong monarchy was gradually transformed into a government dominated by Parliament” (155). Parliament expanded its role in creating laws through legislation, thus supplanting the role of the courts which were headed by the king. In contrast to the common law created by judges declaring the law on a case-by-case basis, Parliament could pass legislation that would be “a positive instrument of social engineering and this would often take the form of introducing new institutions of central and local government or would confer new executive powers on existing authorities” (Cornish and Clark 14). Politicians aligned in two groups: those seeking legislative legal reform to benefit the middle class and those seeking to maintain the common law system that benefited the landed class. Some argued that the
common law system needed reform because: “[t]he legal system was, to a large degree, disorganized and even incoherent” (Reed 165). For example, most criminal prosecutions would only begin if a victim investigated the crime and presented evidence to a magistrate (165). The debate involved discussions about chivalry which was seen as the Norman source of common law. Some legal scholars like William Blackstone in 1776, engaged in “the romantic fancy” of comparing England’s common law “to a picturesque old Gothic castle” (Plucknett 72).4

Scholars are divided about whether Scott wrote *Ivanhoe* to defend the common law system or to provide support for reforming it. One could interpret *Ivanhoe* as positing that the common law that developed from the various systems competing at the time of King Richard is fine and not in need of reform. In support of this interpretation, Clare Simmons notes that in *Ivanhoe*: “The medieval past reminds Britons of their duties: to the model of chivalry, toward the poor, and to an unselfish code of conduct”; however, “chivalric codes are open to criticism as providing a justification for structures of oppression” (4).5 *Ivanhoe* endorses the right of the Normans to rule the Saxons and is supportive of the blended legal system to serve the people of medieval England. This favorable depiction of the formation of the common law has led Bruce Beiderwell to argue: “Scott was an embattled Tory [conservative] in an age of reform” (3). Graham McMaster relies on the fact that Scott was an official for a common law court in Scotland as support for his contention that Scott wrote *Ivanhoe* as a defense of the common law (65). However, as Simmons notes: “Unlike English common law, which traditionally claims a perfection through traditional interpretation and ultimately from its derivation from nature, Scottish law acknowledges its hybrid origins and the inherent limitations of a system put together over ages by imperfect people” (168).

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4 “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 conveyance, are cheerful and commodious, though their approaches are winding and difficult” (Blackstone, 3: 268).

5 Simmons also notes that Godwin associates the legal system and the people who manipulate it with chivalry in the person of Falkland in *Caleb Williams* (4).
Regardless of Scott’s intentions, he succeeds in de-mystifying the common law by
portraying its historical origins, which, I argue, supports the premise that it should be
reformed to meet differing social needs over time. The portrayal of King Richard’s nation-
building process shows that law is man-made and fallible. *Ivanhoe* portrays how the
Normans who invaded England had to reform their Norman laws in order to secure the
consent of the Saxons. Richard returns from a crusade to find English society is ruled by five
competing legal systems. He secures the allegiance of the Normans, Saxons, outlaws, and
local church prelates and begins the process of creating the common law. The Norman law
which is based on chivalry must be combined with the Saxon law based on custom to create a
new law of the land. Laws of chivalry are relevant to the society of the Middle Ages which is
characterized by battles, kidnappings, and a feudal class system, but Scott makes no claim
that this system is relevant for the very different modern society in which he lives. In fact,
Cristina Costantini observes: “*Ivanhoe* is intended to unmask the false rhetoric which founds
the mythologies of the ancient constitutionalism, and in so doing undercut the presumed
authority of its complementary common law jurisprudence” (480–81). By unmasking
mythologies about chivalry and the infallibility of the common law, Scott suggests to the
reader that the law can be reformed. Just as the Norman law was not perfect and required
reform to suit English citizens, the common law in existence in Britain in the early
nineteenth-century could, indeed it should, be reformed to meet the modern needs of British
(English, Scottish, and Welsh) citizens. Whereas in *Caleb Williams*, Godwin offers no hope
that the legal system can be reformed, *Ivanhoe* exemplifies the process of legal reform to
meet changing social needs and values.

Like Scott, Elizabeth Gaskell employs Godwin’s narrative tactics in the legal problem
novel *Mary Barton*, published in 1848. *Mary Barton* is one of the first legal problem novels
to reflect the social problems that arose during the Industrial Revolution. Jan-Melissa
Schramm observes that Gaskell and subsequent novelists “saw themselves as witnesses . . .
of a higher truth than that which the lawyers could prove in court, in the tradition of cultural
appreciation which acclaimed poets as the ‘unacknowledged legislators’ of the world” (183).
The novel portrays the living conditions of members of the working class of Manchester,
England during the early nineteenth century when Manchester was the “industrial centre of
the world” (Fryckstedt 31). It depicts the problems that resulted from overcrowding and
industry: unsanitary conditions, unemployment, disease, lack of drinking water and ventilation in housing, and starvation (33–53). Gaskell wrote to her editor: “It is a large subject & I think it ought to be written upon” (Chapple 43). In the preface to *Mary Barton*, Gaskell claims to express the opinion of some of the factory workers that “the injustice and unkindness which they endure from their fellow-creatures, taints what might be resignation to God’s will, and turns it to revenge” (4). Her novel portrays the poor in a sympathetic manner to enlist her readers to help them.

Gaskell wanted her novel to be an instrument for social change in the hands of her readers. In the epigraph to *Mary Barton*, Gaskell quotes Thomas Carlyle’s essay “Biography” discussing the writer of a novel pondering that her novel might “find one and the other, into whose still longer ears it may be the means, under Providence, of instilling somewhat” (Gaskell 1).6 Richard Salmon argues that Carlyle’s writings were “the most important single influence on early to mid-Victorian aspirations for the cultural status of the novelist” (134). Carlyle argues: “The Hero as Man of Letters . . . today is altogether a product of these new ages; and so long as the wondrous art of Writing, or of Ready-writing which we call Printing, subsists, he may be expected to continue, as one of the main forms of Heroism for all future ages” (“Heroes and Hero Worship” 86). Carlyle’s reference to the business of printing indicates his awareness that writers are motivated by the need to make money which has caused several critics to observe that the “Carlylean man of letters” is in an “uncomfortable occupation of a juncture between the ideal and material” (Salmon 136). Gaskell’s choice of epigraph “can be read either as deprecating her own position as novelist, by accepting the limited aspirations of the genre, or (more likely) as questioning Carlyle’s somewhat patronizing assumption of its inferior status” (137).

*Mary Barton* is not a frivolous narrative meant solely to entertain. It deals with extremely important issues of social injustice and seeks to move the reader to action, so it is more likely that she chose Carlyle’s words for the epigraph because she endorsed the plain

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6 Unless otherwise noted, references to the text of *Mary Barton* are to the Vintage edition.
meaning of the words—she wanted her novel to be “the means” “of instilling” in the “long ears” of her readers a desire to take social action. Her novel “suggest[s] that fiction can materially intervene in the conflicts they represent, changing public life and commercial relations because they figure themselves as part of this world” (Starr 385–86). Gaskell “offers no political answers, but centres her reforming vision on a call for better listening and more generous feeling” (Foster xxvi). Given the popularity of *Mary Barton* at the time it was published, and its continuing popularity, it is fair to say that Gaskell was at the forefront of a literary movement in the Victorian era that successfully elevated the legal problem novel from entertainment to an effective form for advocating for social justice.7

Gaskell uses Godwin’s forensic narrative technique when she presents the facts of a criminal murder trial against an innocent man. Also like Godwin, she informs the reader of an important exculpatory fact that is not presented to the court. Gaskell places the legal system on trial, in addition to placing Parliament and the police on trial. Unlike Godwin who offers no alternative to the legal system in *Caleb Williams*, Gaskell advocates for capitalist masters to take responsibility for the welfare of their workers and rallies the reader to apply religious notions of forgiveness when judging the deeds of others and to offer redemption to law-breakers. She also suggests legislative legal reform in the preface.

Godwin, Scott, and Gaskell wrote these legal problem novels roughly during the period that began with the French Revolution of 1789 and ended with the Revolutions of 1848. Gaskell observes in the preface that the necessity of paying attention to the sentiments of workers like John Barton “has received some confirmation from the events which have so recently occurred among a similar class on the Continent” (4). This is a reference to the Revolutions of 1848 which occurred in many European countries where the governments had failed to address the social problems of urban and rural people (Rapport x). As the people of other countries made revolutionary changes in their governments, these three novelists

7 For a discussion of the popularity of *Mary Barton* during Gaskell’s lifetime, see Annette Hopkins’s article “*Mary Barton*: A Victorian Best Seller.”
produced novels which examine the flaws in the English legal system and, more importantly, suggest responses to their readers.

Although they use similar narrative tactics, the novelists approach the subject of an unjust outdated legal system in different ways. Godwin portrays the legal system as a rigged system benefitting landed gentry and incapable of being reformed. This leaves the reader with one option, i.e. to seek a change of the entire governing system, similar to his proposal in *Enquiry Concerning Political Justice* (hereinafter *Political Justice*). Scott, a member of the legal community, portrays the historical events surrounding the formation of the common law, showing the law as a human construct and challenging notions that it is infallible. Scott’s novel portrays how the legal system can and must be reformed to meet the changing needs of a society. Gaskell portrays the legal system similar to the way Godwin does: a rigged system favoring the upper class and oppressing the poor. However, Gaskell suggests that the legal system should be reformed to bring it in line with widely held religious beliefs of rehabilitation and forgiveness. The three novels move beyond the mere story telling function to intervene in society and advocate for legal reform.
CHAPTER 1

CALEB WILLIAMS: THE PROTOTYPE LEGAL PROBLEM NOVEL

William Godwin’s novel, Caleb Williams is the first British novel to criticize the legal system as a means of undermining public perception of law as infallible for the purpose of creating a public demand for legal reform. It was published in 1794, the year after Godwin expressed his concerns about the political and legal system in Political Justice. Godwin wrote the treatise at a time when many of his friends who were criticizing the government were being tried for treason and he lived with the fear that he would also be charged with treason for publishing it (Grossman 49–50). In the treatise, Godwin concludes that the social problems in England are due to the unequal distribution of property, and: “[t]he rich are . . . directly or indirectly the legislators of the state; and of consequence are perpetually reducing oppression into a system and depriving the poor” (Godwin, Caleb Williams 483). In Caleb Williams, Godwin questions the fitness of wealthy landowners to administer justice in the current system and portrays how legal procedures impede just claims and oppress lower classes. Godwin develops a new novel form for this purpose: the “legal problem” novel. Narrative features of the Caleb Williams include the forensic presentation of evidence relating to fictional court cases, and portrayal of a legal system in competition with the government system. The legal problem novel calls upon the reader to question the adequacy of the legal system and seek reform. This chapter will analyze how William Godwin developed the narrative form in Caleb Williams to question the laws and legal procedures of the late eighteenth century, and subsequent chapters will discuss how the successive legal problem novelists, Walter Scott and Elizabeth Gaskell, used and further developed Godwin’s narrative form.

Caleb Williams presents both civil and criminal cases to the reader. All the cases involve unscrupulous gentlemen (Tyrrel and Falkland) who use legal procedures to prevail
over poor litigants. The ruling class runs the legal system and employs legal procedures to obstruct the truth and tyrannize members of the lower class. The civil cases are Tyrrel’s action for debt case against Emily and Hawkins’s civil trespass case against Tyrrel. The criminal cases are the aggravated trespass case against Hawkins’s son, the murder case against the Hawkinses, and the theft case against Caleb. In each of these narratives, a legal action is initiated in the civil or criminal system; one of the parties is poor; and the other party is either the government acting on behalf of a rich person or the rich person. All the legal cases are administered by magistrates, judges, and justices of the peace who are members of the gentleman landowner class. Each trial narrative reveals flaws in the law and administration of the legal system.

The first legal case depicted in *Caleb Williams* is the civil suit initiated by Barnabas Tyrrel against Emily Melville for a debt. The narrator of the novel (Caleb Williams) explains that he has learned many of the facts from Falkland’s servant Mr. Collins, and that: “I shall interweave with Mr. Collins’s story various information which I afterwards received from other quarters, that I may give all possible perspicuity to the series of events” (Godwin, *Caleb Williams* 66). Caleb creates the following narrative “record” of facts to which the reader is to apply the law: Tyrrel is “a true model of the English squire” (74) who is “insupportably arrogant, tyrannical to his inferiors, and insolent to his equals” (75). Emily is Tyrrel’s orphan cousin, taken in by Tyrrel’s mother when she was an infant (98) and Tyrrel’s ward after his mother’s death (100). She is 14-years old, petite, and speaks “from the pure gaiety of a youthful heart” (99–100). Tyrrel develops a hatred of his neighbor Falkland and “seem[s] to lie in wait for his victim, and to collect his venom for a mortal attack” (90). Tyrrel’s “paternal interest” in Emily’s welfare (100) turns to hatred when Emily praises Falkland for saving her from a fire. Tyrrel becomes “determined to wreak upon [Emily] a signal revenge” (108). He chooses an uncouth man, Grimes, to marry Emily; she refuses; and Tyrrel locks her in her room under the watchful eye of a loyal servant (119). Emily escapes Tyrrel’s house with the help of Grimes, who tries to rape Emily, but she is saved by Falkland. Tyrrel is concerned that Falkland will tell the community about Tyrrel’s treatment of Emily, thus “publishing his dishonour” (147).

Based on these facts, Tyrrel files a lawsuit against Emily to satisfy his thirst for revenge against Falkland. He orders his bailiff Barnes to arrest Emily and Barnes replies:
Lord love your honour! Arrest her! Why she does not owe you a brass farthing: she always lived upon your charity!

Ass! Scoundrel! I tell you she does owe me,—owes me eleven hundred pounds—the law justifies it.—What do you think laws were made for? I do nothing but right, and right I will have.

. . . Why, if she owed you ever so much, she cannot be arrested. She is not of age.

. . . Let him dispute it that dares! I will do it now and stand to it afterwards. . .

(Godwin, *Caleb Williams* 149)

Tyrrel seeks repayment of a debt from Emily for her room and board and begins his lawsuit with her arrest. Barnes raises two legal questions: (1) Did Emily incur a debt for the cost of room and board conferred by Tyrrel and his mother as an act of charity? (2) Is Emily a competent party to the lawsuit based on her age? An additional issue that Godwin hints about is whether Emily has a defense to the action for debt.

The first legal question concerns the validity of Tyrrel’s claim that Emily owes him a debt. It is important to note Tyrrel relies on a fiction. Tyrrel converts his and his mother’s charitable act of caring for a relative to a contractual one. He acts as though Emily has entered into a contract with him whereby she agreed to pay for room and board and he overlooks the fact that he is Emily’s guardian. The absurdity of this notion is that he seeks compensation going back fourteen years which would require Emily to have entered into the contract when she was an infant. In the eighteenth century, a contract could only be formed when one party made an offer, the other party accepted it, and there was consideration (something of value conferred by each party on the other) (Cornish and Clark 203). Since he made no offer to Emily when she was an infant and she did not accept any offer, if Tyrrel were to seek reimbursement of the costs of Emily’s room and board under a theory of contract law, he would not be able to prove his case.

Fortunately for Tyrrel and other members of the landed gentry, English law provided a second theory for him to recover his outlay as a “debt.” In the sixteenth century, a second legal system had developed in England: the Court of Chancery. This court “administered the distinct set of principles known as equity” (Cornish and Clark 26). The Court of Chancery derived its authority to resolve disputes from the Lord Chancellor “who reviewed petitions to the monarch. . . principally in the interests of the propertied private suitor” (26). By the eighteenth century, Chancery had its own courts and judges who heard cases in which there
was no right to a jury, and the judges could order citizens to do actions and imprison them if they failed to comply with their orders (27). In 1602, the Exchequer Chamber consisting of all the judges of England decided in *Slade’s Case* that a legal theory known as *indebitatus assumpsit*, which had originated in the equity courts, could be used in the common law court (Plucknett 609). This legal theory allows a party to seek compensation when “the parties are in a relationship which has been covered by the action of debt” (608). An action under “*indebitatus assumpsit* [could be] brought on a preceding debt where that debt for one reason or another, although actually incurred, was not enforceable” such as debts incurred when the debtor was a minor or at a time beyond the Statue of Limitations (616). The common law courts enforced such “debts” as though they were incurred as part of a contract by using the fiction that the conferring of the benefit known as *quid pro quo* was the consideration needed to prove the agreement to repay (614). Tyrrel’s action against Emily relies on this reasoning, i.e. Emily’s receipt of a benefit from Tyrrel makes her indebted to him.

The second legal question raised by Barnes, whether 14-year-old Emily is too young to be sued in court for debt, can be answered “probably.” In England in the eighteenth century children could enter contracts, and if a contract was for the “immediate exchange for goods or chattels [it] was binding: it was done. But if a child wanted to be obliged to pay in the future . . . then the agreement could in some cases be voided” (Brewer 240–41). Contract cases involving issues of whether minors could be held responsible for future contractual obligations tended to involve apprentices, and the courts ruled that: “the ability to purchase by bond (or formal agreement to pay in the future) was binding, so long as one ‘needed’ the item one bought” (241). Emily would most likely have to respond to Tyrrel’s lawsuit and could not escape responsibility for payment to him based on her age because Tyrrel provided her with necessities.

Godwin also raises the possibility that Emily may have a defense to the action because she may have a right to some of the property Tyrrel inherited. Godwin observes “In equity, perhaps, she was entitled to that portion of the fortune which her mother had forfeited by her imprudence, and which had gone to swell the property of the male representative” (*Caleb Williams* 98). Emily’s mother was Tyrrel’s father’s sister, so Emily may have some right to inherit part of the estate when her uncle dies, but no one makes this claim for Emily and Tyrrel receives the entire estate. If Emily has a right to own a portion of the estate, she
would be able to defend herself by claiming either that Tyrrel received her share of the estate as payment for her room and board, or that Tyrrel acted as her guardian when he dispensed her share of the estate to her in the form of room and board. Emily has no one to help her claim her legal rights in her defense, which highlights how the litigant with money is able to pursue unjust actions against unrepresented indigent parties in courts of law.

Whether or not Tyrrel has a legal theory on which he can recover his costs from Emily, he is able to institute his action by having her arrested and imprisoned based solely on his accusation. This reveals the power of the landed gentry to use legal procedure (as distinguished from the laws themselves) to afflict ordinary citizens. English common law allowed the courts “to arrest defendants before their trial for debt . . . so as to ensure their presence at the trial . . . and equally to enforce judgements against them” (Cornish and Clark 228). Arrest was possible solely upon the presentation by the creditor of a writ to the justice of the peace, which is why Tyrrel directs Barnes to: “‘Go instantly to Swineard, the lawyer, and bid him finish the business out of hand!’” (Godwin, *Caleb Williams* 149). Barnes obeys Tyrrel, obtains a writ, and arrests Emily, even though she is gravely ill (150). The lady caring for Emily, Mrs. Hammond, likens such an arrest to murder when she asks Barnes, “‘You are bailiffs, are you not? You are not murderers?’” (151). This causes Barnes to consider whether he may be liable for murder if Emily dies due to the arrest. Barnes concludes: “in all doubtful questions and presumptive murders, the practice of the law inclined, with laudable partiality, to the vindication of its own officers” (152). In this passage, Godwin holds the legal system complicit in perpetrating mortal harm against innocent individuals wrongly sued by wealthy litigants. Barnes can arrest Emily without any real concern that his actions may kill her because the legal system protects him from liability for his actions on its behalf. The legal system recognizes an accusation as a sufficient basis to imprison Emily until there is a trial to determine the truth of the accusation. Tyrrel is unscrupulous and the legal system is corrupted by being his instrument of spite. Falkland “bail[es] the debt” which means he provides the court with an amount of money sufficient to convince the court to release Emily (155). She is moved to an apartment, but dies in a mournful scene. The narrator observes: “Perhaps tyranny never exhibited a more painful memorial of the detestation in which it deserves to be held” (157). Emily, the embodiment of innocent childhood and maidenhood, is the victim of the legal system at the hands of her guardian. Tyrrel uses laws developed to
address conflicts arising in commercial transactions to have his cousin Emily arrested for receiving his charity and the arrest kills her. The legal system is not a tool of justice, it is the tool of a tyrant.

After Tyrrel wreaks his vengeance on Emily, he uses the courts to destroy the family of one of his tenant farmers, Hawkins. Tyrrel’s campaign against Hawkins begins in the civil court and moves to the criminal one. Hawkins files a civil suit against Tyrrel. The novel does not explain what kind of a lawsuit he files, but it involves allegations that Tyrrel flooded the farmland that Hawkins leased from Tyrrel and that Tyrrel’s action made Hawkins’s cattle sick (Godwin, *Caleb Williams* 138). This lawsuit raises issues about the rights of the tenant in relation to his landlord regarding the use of leased property. Godwin likely chooses to portray a property case to highlight issues arising from the unequal distribution of property. Godwin writes in *Political Justice*: “The subject of property is the key-stone that completes the fabric of political justice” (Godwin and Salt 35). He regards the unequal distribution of property as an injustice: “If justice have any meaning, nothing can be more iniquitous, than for one man to possess superfluities, while there is a human being in existence that is not adequately supplied with these” (39). The civil suit by Hawkins in *Caleb Williams* provides an example of the injustice of the property ownership system of England by pitting the interests of a productive tenant against the malicious interest of the landlord who interferes with the tenant’s ability to farm the land.

Godwin presents this case forensically by providing the reader with the following facts: Hawkins rented property from Tyrrel after Hawkins had a disagreement with his prior landlord (Godwin, *Caleb Williams* 131). Tyrrel offered to employ Hawkins’s son in a service job on his estate involving hunting (Godwin, *Caleb Williams* 134); Hawkins declined this offer (135); and Tyrrel ordered Hawkins to get off his estate (136). Hawkins replied that he had a lease and would not leave (137). This prompted Tyrrel to breach a dam on his land causing the flooding of Hawkins’s field (138), to do something to make Hawkins’s cattle die (138), and to have his servants remove the fence enclosing Hawkins’s cattle so they destroyed Hawkins’s crop (138). If these facts were to be presented in a court of law, Hawkins may prove a case against Tyrrel for trespass. In modern usage, “trespass” means “the intentional and wrongful invasion of another's real property” (“Trespass”). However, in English common law, “trespass” involves the infliction of harm on the property of another
Trespass. Trespass could be to land, to personal property or “trespass on the case” which involves violating another person’s legal rights (“Trespass”). The individual who is harmed by the act of trespass may file a civil action against the trespasser seeking monetary compensation or the government may file a criminal action against a trespasser of land seeking fines or imprisonment.

Hawkins would allege that Tyrrel trespassed against his personal property by causing it to be flooded, taking down Hawkins’s fence, and doing something to make Hawkins’s cattle sick. Hawkins could not claim a trespass to land because a tenant in the eighteenth century held his farm as personal property, not as real property (Plucknett 441). In a lease, the lord of the manor (Tyrrel) retains ownership of the land and merely transfers the right to farm the land to his tenants. However, ownership of the land would not permit the landlord to intentionally flood his tenant’s land and do other actions which harm the personal property farming rights of his tenant. Thus, Hawkins would have a strong case for seeking compensation for his damages caused by Tyrrel’s trespass. In addition, the trespass law at the time would allow Hawkins to recover damages from Tyrrel even though Tyrrel did not personally remove Hawkins’s fence but ordered his servants to remove it; and it would allow recovery for the flooding even though it was caused by Tyrrel removing a dam not on Hawkins’s property. These activities would be trespass “on the case” which allows recovery when the trespasser acts indirectly (440–41).

Hawkins’s case highlights how common law judges developed the laws governing the use of lands to facilitate the gradual evolution of England from a feudal society to a society of free men ruled by a central government. In the eighteenth century, landowners had large estates. “The essential counterpart of the large and medium estates, whether the land was settled or unsettled, was the system of farming through tenants . . . the farmer of the unit being the provider and organiser of the necessary labour and the supplier of at least working capital, such as stock or seed” (Cornish and Clark 132). The development of laws establishing long-term leases “had a vital bearing upon increased production” of farms which enriched the country (134). Thus, eighteenth-century readers of Caleb Williams would be expected to condemn a lord of a manor for interfering with a tenant like Hawkins who works to make England prosper. The facts that prompt Hawkins to file a trespass case highlight the types of injustice that arise in a society where a small percentage of idle citizens prosper from
the work of other citizens. Godwin condemned this system of landlord/tenant property ownership in *Political Justice*: “All riches, and especially all hereditary riches, are to be considered as the salary of a sinecure office, where the labourer and the manufacturer perform the duties, and the principal spends the income in luxury and idleness” (Godwin and Salt 53).

By presenting this case, Godwin shows “that law was better adapted for a weapon of tyranny in the hands of the rich, than for a shield to protect the humbler part of the community against their usurpations” (*Caleb Williams* 138). Tyrrel is able to use the pretrial process to delay trial and prevent the presentation of facts in court: “The direct repelling of the charge exhibited against him was the least part of his care; the business was, by affidavits, motions, pleas, demurrers, flaws, and appeals, to protract from term to term, and from court to court” (138). This civil trial, like the one against Emily, involves a rich litigant using legal procedures to delay the determination of the truth in order to punish the poor litigant. Tyrrel’s strategy of delay leads to his winning the lawsuit and he “[takes] the earliest opportunity of seizing upon [Hawkins’s] remaining property in the mode of a distress for rent” (141). “Distress” allows a landlord “to seize any personal property, which would include tools, stock and produce, that he could find on the leased premises” and to either demand payment of rent from the tenant or sell the goods to satisfy his monetary claim (Cornish and Clark 135). Cornish observes: “No ordinary creditor enjoyed so wide-ranging and summary a right” (135). Although Hawkins’s suit is unreasonably delayed in the courts, Tyrrel is afforded an expedient legal procedure for seizing Hawkins’s goods and selling them.

Tyrrel punishes Hawkins for filing the civil lawsuit against him by directing his attorney to charge Hawkins’s son with a capital crime and the younger Hawkins is arrested. Thus begins the first criminal case in *Caleb Williams*. While the civil law disputes are between individuals and are susceptible to manipulation by one of the parties, criminal law matters are brought in the name of the king theoretically for the public good rather than for the benefit of a party. In practice, however, the criminal justice system portrayed in *Caleb Williams* favors the landed gentry in much the same way that the civil system does.

Godwin presents this case forensically by providing the following facts: a private road provided the only path for Hawkins to get his goods to market (*Caleb Williams* 139).
Tyrrel and another tenant of his “shut up” this road (139); but Hawkins’s son “went in the middle of the night, and removed all the obstructions that had been placed in the way of the old path, broke the padlocks that had been fixed, and threw open the gates” (140). Young Hawkins “had buttoned the cape of his great coat over his face” when he removed the obstruction (140); and he used a “wrenching-iron” to break the padlocks (140). Based on these facts, Tyrrel could bring a civil trespass lawsuit or ask the government to prosecute it as a crime. Criminal trespass was defined as: “[e]very unwarrantable entry on another's soil” (Blackstone 3: 123).

Crimes were divided into felonies, punishable by death, and misdemeanors, like trespass, punishable by imprisonment and fines (Plucknett 430). Tyrrel instructs his attorney to institute a criminal case against young Hawkins, not for trespass, but for violating a felony law prohibiting being armed and disguised, and in a place where “hares or conies have been” (Godwin, Caleb Williams, 140). By alleging these additional facts, Tyrrel’s lawyer elevates a misdemeanor trespassing case to a capital felony case punishable by death. Tyrrel’s attorney alleges violation of the Waltham Black Act passed by Parliament in 1722 (Radzinowicz and Hood 49). Blackstone explains the Act was passed in response to “the devastations committed in Epping forest, near Waltham inn Essex, by persons in disguise or with their faces blacked; (who seem to have resembled the . . . followers of [Robin] Hood)” (4: 245). The Act made many acts punishable by death, including “appear[ing] armed and disguised in . . . warrens. . . [and] other places where hares or conies have been or shall be kept” (Radzinowicz and Hood 57). As Leon Radzinowicz observes, the Waltham Black Act was very broadly interpreted by judges to include “[t]he simple appearance, without any other crime being committed or even attempted, by anyone with his face blacked or otherwise disguised” in designated areas (57). Approximately 350 acts were made crimes under the Waltham Act, prompting Radzinowicz to marvel: “It is very doubtful whether any other country possessed a criminal code with anything like so many capital provisions as there were in this single statute” (76–77). The Waltham Black Act was in place from 1722–1823 (77–78). In Caleb Williams, Godwin shows how Parliament has provided Tyrrel and other tyrants with a broadly worded statute that Tyrrel adeptly uses to threaten the life of a young man removing obstructions from the road leading from the young man’s home to market.
Tyrrel is able to control the criminal case because in rural areas during the eighteenth century, criminal cases began only when a citizen (prosecutor) made a presentation before the justice of the peace and asked the justice to have the wrongdoer arrested (Cornish and Clark 545). Justices of the peace heard testimony and determined whether to hold the accused for trial (561). In Caleb Williams, Tyrrel “prevailed upon the justices, by the picture he drew of the obstinacy and insolence of the Hawkinses, fully to commit the lad upon this miserable charge” (Godwin 140). The justices of the peace commit young Hawkins to stand trial on the charges, not because the facts indicate he is guilty of the charge, but because they are members of the landed gentry and want to punish the Hawkins family for being insolent (141). As Graham observes: “Caleb Williams reveals the contradiction between the sanguine ideal of British justice and a legal system used consistently as an instrument of tyranny to retain power in the hands of country gentlemen” (198). Once a person is held for trial on the criminal accusation, he must wait, usually in a gaol, until the next assize or quarter session (Cornish and Clark 561). At the assizes, there is another series of hearings where the charges are read to the accused; he enters a plea; the matter is referred to a grand jury which hears witnesses and decides whether to return a “true bill” to hold the defendant for trial; and the defendant’s guilt is determined by a jury (561–62). The young Hawkins escapes from gaol before the assizes (Godwin, Caleb Williams, 145). He becomes a fugitive who must hide from authorities and he is subsequently apprehended and tried for a new crime (174).

Young Hawkins and his father are arrested and tried for the murder of Tyrrel. Godwin presents the reader of the novel with the evidence considered by the court as sufficient to convict the Hawkinses but presents an additional piece of evidence to the reader that is unknown to the court which proves they are not guilty. The evidence presented in court is that Tyrrel was found dead near the assembly house of the town (Godwin, Caleb Williams, 165); he died from a wound from a knife which had broken, leaving a part in the wound (174); a rusty handle and partial blade of a knife that matched the piece in Tyrrel’s wound.

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8 The assizes were the courts where cases were tried.
was found at the Hawkinses’ home (174); bloody clothes belonging to Hawkins were found in a ditch (173); and two people saw Hawkins and his son in the town where Tyrrel was killed on the evening of the murder (174). Based on this circumstantial evidence, the jury reasonably concludes the Hawkinses killed Tyrrel. However, the jury does not know one critically important fact: Falkland confessed to the murder. Falkland tells Caleb: “‘I watched my opportunity, followed Mr. Tyrrel from the rooms, seized a sharp-pointed knife that fell in my way, came behind him, and stabbed him to the heart’” (214). Falkland admits that the Hawkinses were unjustly convicted for a murder they did not commit and provides an alternate explanation for the circumstantial evidence: “‘I suppose, by some miraculous accident, Hawkins was passing by, and endeavoured to assist his oppressor in the agonies of death’” (214). The jury is ignorant of Falkland’s confession so it does not consider any interpretation of the evidence other than that leading to a conclusion of guilt. Godwin’s tactic of revealing a fact to the reader that is not known to the jury is one that is used by writers of future legal problem novels including Elizabeth Gaskell in Mary Barton. This writing tactic exposes the injustice of a system in which juries make decisions without hearing all the necessary facts.

The Hawkinses are convicted of murder, a form of homicide, and executed. When one kills a person, the law deems that act to be a homicide. English common law divides homicides into murder which is willful and with malice aforethought, and manslaughter which is not (Plucknett 421). The Hawkinses are convicted of murder which means the jury determined that they planned to kill Tyrrel and intended to kill him. The penalty for murder is death. Falkland’s failure to take responsibility for his crime leads to the Hawkinses’ executions and makes him, as he acknowledges, “‘the assassin of the Hawkinses’” (Godwin, Caleb Williams, 214). He also makes it clear to Caleb that he will kill again to keep the fact that he murdered Tyrrel secret. He warns that he will watch Caleb closely and “‘if ever you excite my jealousy or suspicion, expect to pay for it by your death or worse’” (215).

Falkland’s use of the criminal justice system to ensure Caleb’s silence is the final criminal case in the novel. This legal case portrays how chivalry is not the noble concern of the master for his servant but the master’s base desire to enjoy an honor which he does not deserve. Similarly, the current legal system which is based on chivalry is merely a tool for injustice. Falkland fails to take responsibility for Tyrrel’s murder because he is concerned
with his honor. Until Falkland admits to Caleb that he murdered Tyrrel, the narrative presents Falkland as a noble gentleman adhering to a code of chivalry. Chivalry is the law of the feudal system which presupposes that the lord/property owner acts for the good of his serfs and imposes a duty of noblesse oblige on the property owner. Falkland “imbibed the love of chivalry and romance” from “the heroic poets of Italy” (Godwin, Caleb Williams, 67). He lectures Tyrrel on noblesse oblige: “‘We that are rich, Mr. Tyrrel, must do every thing in our power to lighten the yoke of these unfortunate people’” (143). While Falkland acts laudably in several respects because he adheres to the principles of chivalry, he acts viciously and irrationally when his honor and his reputation are challenged. When Falkland must defend himself to a gathering of his fellow magistrates for the murder of Tyrrel, he becomes a different person because “[h]e was too deeply pervaded with the idle and groundless romances of chivalry, ever to forget the situation, humiliating and dishonourable” (166). Falkland vows to Caleb: “‘I will leave behind me a spotless and illustrious name’” (215).

Although England developed from a feudal system to one involving individual land ownership, notions of chivalry remained an underpinning of the justice system. Chivalry was the subject of debates about the legal system during the late eighteenth century, after the French Revolution of 1789. Edmund Burke defends the British government system in “Reflections on the Revolution in France (1790),” arguing it is based on chivalry which he describes as: “All the pleasing illusions which made power gentle and obedience liberal, which harmonized the different shades of life, and which, by a bland assimilation, incorporated into politics the sentiments which beautify and soften private society” (474). He concludes that “the age of chivalry is gone” because it has been “dissolved by this new conquering empire of light and reason” of Enlightenment ideas (474). Godwin responds to Burke’s lamentation in Political Justice: “Indeed, ‘the age of chivalry is’ not ‘gone!’ The feudal spirit still survives, that reduced the great mass of mankind to the rank of slaves and cattle for the service of the few” (Caleb Williams 491). In Caleb Williams, Godwin takes issue with the argument that a legal system based on chivalry will achieve justice because the gentlemen who administer it act for the benefit of those who depend on them. Chivalric ideas of honor motivate Falkland to frame Caleb for a crime he did not commit and to pursue him. Falkland’s misguided desire for honor is eulogized by Caleb at the end of the novel: “Falkland! thou enteredst upon thy career with the purest and most laudable intentions. But
thou imbibedst the poison of chivalry . . . and the base and low-minded envy . . . operated with this poison to hurry thee to madness” (434). Falkland’s belief in chivalry mirrors that of defenders of the current legal system (such as Burke) and it motivates him to be complicit in the murder of the Hawkinses and the persecution of Caleb.

Falkland accuses Caleb Williams of robbery (Godwin, *Caleb Williams*, 247), a form of the common law crime of larceny which is “the felonious taking, and carrying away, of the personal goods of another” exceeding the value of twelve pence (Blackstone 4: 230). Using the forensic approach, Godwin presents the following evidence to the reader: Caleb was in Falkland’s private apartment on a day when there had been a fire in the house (*Caleb Williams* 247); a lock on a trunk in the apartment was broken on that day (248); Falkland claims he discovered that 900 pounds in bank notes, 3 gold items, diamonds, and other items were missing from the trunk after the lock was broken (247); Falkland’s valet observed Caleb was visibly upset on the day of the fire; and Caleb told the servant he was miserable (250). Caleb escaped the house at a later date (249) and Falkland’s watch and some jewelry were found in a box of Caleb’s belongings (251). Caleb claims to have written a letter to Falkland telling him of his departure which Falkland denies receiving (253–54) and Caleb denies taking the goods or placing them in his box (254). Based on this evidence, the magistrate Forrester concludes that there is “direct evidence [which is] strong; the corroborating circumstances numerous and striking” and invites Caleb to make a statement in his defense (256). Caleb unsuccessfully argues for his innocence and deliberately does not tell Forrester about Falkland’s murder confession and his threats against Caleb. Forrester “‘commit[s] the accused to the county jail’” (259).

This initial hearing appears to be fair, especially since Caleb is offered the opportunity to defend himself and he chooses to withhold the evidence that may exonerate him. However, if one considers that Caleb is a servant and Falkland is his master, any notion that he has a choice in the matter is illusory. As it turns out, when Caleb subsequently tells the story of Falkland’s confession years later in another hearing, the magistrate first refuses to hear the evidence because Caleb is not an accomplice to Tyrrel’s murder, then he does not believe Caleb because: “‘There would be a speedy end to all order and good government, if fellows that trample upon ranks and distinctions in this atrocious sort were upon any consideration suffered to get off’” (Godwin, *Caleb Williams*, 377). The magistrate regards
Caleb’s accusations against a squire as undermining the legal system and further evidence of his guilt. The magistrate’s indignant reaction to Caleb’s statement of the truth shows the partiality of the legal system which makes it unable to determine truth and serve justice. Graham observes: “Government in England in the eighteenth century was very much of the country gentleman, for the country gentleman and by the country gentleman” (23). Country gentlemen like Falkland served in the House of Lords and House of Commons, and they acted as magistrates, justices of the peace, and judges (Cornish and Clark 20–21). As the alternate title of Caleb Williams promises, Godwin portrays Things as They Are in England’s legal system.

Caleb is held in a gaol until he can be tried at the assizes. The condition of the gaols and prisons reached a low point in the years 1776–1787 because the American Revolution prevented transportation of convicts to America and transportations did not resume until 1787 to Australia (Cornish and Clark 572–74). When judges could not order transportation as a punishment, they sentenced convicts to imprisonment in gaols and prisons (560). Gaols and prisons were built for short periods of incarceration of debtors and those accused of crime waiting for trial at the assizes (560). When judges returned inmates to gaol after sentencing them to serve lengthy sentences, the gaols became overcrowded. In Caleb Williams, the wretched conditions of the gaols contribute to the injustice perpetrated by the legal system on the poor. Not only are they unsanitary and overcrowded, but people are held in them for months while they wait for the assizes. Caleb notes that the conditions in gaols are so severe that many prisoners die while waiting for their cases to be heard at assizes. He observes: “I soon found, upon enquiry, that three-fourths of those who are regularly subjected to a similar treatment, are persons whom, even with all the superciliousness and precipitation of our courts of justice, no evidence can be found sufficient to convict” (Godwin, Caleb Williams, 268). The delay of the courts to hear criminal cases causes some inmates like the innocent soldier Brightwell, who is falsely accused of highway robbery and shares a cell with Caleb, to die while awaiting trial (264).

Most of the prisoners in gaol with Caleb awaiting trial are charged with crimes against property: horse-stealing, stealing a sheep, coining, highway robbery, and burglary (Godwin, Caleb Williams, 262–63). In the eighteenth century there was “an ever-increasing volume of statute law . . . designed primarily to impose death as the penalty for crimes
against property” dubbed “The Bloody Code” (Cornish and Clark 545). The Bloody Code included the Waltham Black Act and laws against “robbers, burglars, forgers, serious thieves and others who committed one of the great splay of capital offences against property” (33). Many studies “have now confirmed that the great bulk of eighteenth century prosecutions concerned property offences, mostly without violence” (548). In *Political Justice*, Godwin advocates for the end of all property ownership which would also mean an end to prosecutions for property crimes: “the fruitful source of crimes consists in . . . one man’s possessing in abundance that of which another man is destitute” (Godwin and Salt 58).

Godwin does not offer an alternative to the flawed legal system in *Caleb Williams*. The preface indicates the novel is meant “to comprehend, as far as the progressive nature of a single story would allow, a general review of the modes of domestic and unrecorded despotism by which man becomes the destroyer of man” (55). The narrator Caleb Williams is not a revolutionary calling for a new form of government or a reform of the legal system. However, *Caleb Williams* suggests the novelist is the truth-teller in society while the legal system and narratives spun by wealthy landowners are fictions.

The facts leading to the theft trial of Caleb Williams are recounted in three separate narrative forms: (1) the allegation in court, (2) the “wanted” poster, and (3) the novel. The court record consists of the facts presented to the magistrate in court and in legal documents. The “wanted” poster is a document that the thief-taker Gines has printed and sells to the public described as:

> Here you have the MOST WONDERFUL AND SURPRISING HISTORY AND MIRACULOUS ADVENTURES OF CALEB WILLIAMS; you are informed how he first robbed, and then brought false accusations against his master. . . also of . . . the robberies he committed with a most desperate and daring gang of thieves; . . . with a true and faithful copy of the hue and cry printed and published by one of his Majesty’s most principal secretaries of state, offering a reward of one hundred guineas for apprehending him. (Godwin, *Caleb Williams* 368)

This narrative conflicts in several essential respects with the narrative as told by Caleb because it states Caleb robbed Falkland, falsely accused him, and committed robbery with the thieves. The story-teller is Gines, who is hired by Falkland to find Caleb. Gines “had fluctuated . . . between the two professions of a violator of the laws and a retainer to their administration” (358). There is little difference between his roles as thief and “thief-taker,” which highlights the arbitrariness of a legal system that relies on monetary rewards from
litigants to operate. Gines serves as a prototype for future police officers such as the police in *Mary Barton*. Caleb notes that Falkland and Gines present twin threats to him: “While Falkland was the hungry lion whose roarings astonished and appalled me, Gines was a noxious insect, scarcely less formidable and tremendous, that hovered about my goings, and perpetually menaced me with the poison of his sting” (360). This portrayal of the accusing party as a predator and the predecessor of the police officer as a poisonous insect is mirrored in *Mary Barton* when the victim is likened to a predatory animal and the police officers are likened to hunters. The legal system is no more discriminating than wild animals or hunters.

The reader must choose which of the three narratives about Caleb to believe based on the perceived veracity of each narrator. For the reader to believe Caleb, it is necessary that there be some corroboration of Caleb’s contention that Falkland murdered Tyrrel. This corroboration comes at the very end of the novel when Falkland admits to the murder and to falsely accusing Caleb of robbery. Godwin originally wrote a different ending to the novel in which Falkland does not admit his wrongdoing (*Caleb Williams* 435–38). I argue that he must have realized that he needed Falkland’s confession in order to corroborate Caleb’s tale and to establish the novel as the narrative of truth. Godwin wisely chose to employ the narrative tactic of ending the novel with a corroboration of Caleb’s narrative, and this is a tactic that Elizabeth Gaskell employed in *Mary Barton*.

In addition to the narrative tactic of presenting legal cases forensically, Godwin employs in *Caleb Williams* the narrative tactic of presenting the reader with an alternative legal system which is not based on property ownership. The band of professional thieves led by Captain Raymond act in contravention of the laws of England and have their own system of discipline. Raymond introduces the group: “‘Our profession is the profession of justice . . . We, who are thieves without a licence, are at open war with another set of men who are thieves according to the law’” (Godwin, *Caleb Williams*, 307). Raymond sees his band as co-equal with the landowners who are also thieves and notes that the only difference is that the landowners have a license to steal granted them by the law which the outlaws do not have. Raymond rules the outlaws through reason rather than force because “[a] thief is, of course, a man living among his equals” (307). Raymond asks the band of thieves to vote on issues such as whether to eject Gines from their membership (307–08). The thieves have their own conduct code as is evidenced when one of the thieves learns that Caleb is wanted and there is
a reward for information leading to his capture. The men discuss whether to turn Caleb in to authorities and Raymond argues: “‘What use have you for these hundred guineas? Are you in want? Are you in distress? Can you be contented to purchase them at the price of treachery—of violating the laws of hospitality?’” (314). Larkin claims that Caleb is not entitled to the same level of hospitality as the other thieves because he is among the class of “‘pilferers, and rascally servants, and people that have neither justice nor principle . . . No; I have too much respect for the trade not to be a foe to interlopers’” (315). Larkin’s comments show that there is a hierarchy of thievery which privileges highway robbery over theft by servants. This invites comparison to the legitimate legal system which legitimizes thefts committed by landowners while punishing thefts perpetrated on them. Raymond retorts: “‘Will you for so paltry a consideration deliver up the lamb into the jaws of the wolf? . . . If no other person have the courage to set limits to the tyranny of courts of justice, shall not we?’” (317). The men decide to harbor Caleb based on Raymond’s eloquent argument; however, the old lady who allows them to live in her home informs on Caleb and he must leave. Caleb leaves with money he received from Raymond who “insisted upon my taking a share at the time that each man received his dividend of the common stock” (327–28). By using the language of commerce to refer to the stolen goods, Godwin equates the distribution of the thief’s stolen money to the distribution of dividends on stock received by law-abiding gentlemen.

Even when a thief, like Gines, leaves the band of thieves to become a thief-taker: “among the honourable fraternity of thief-takers it is a rule never to bring one of their own brethren to a reckoning when it can with any decency be avoided” (Godwin, Caleb Williams, 358). Thieves and ex-thieves have their own rules of loyalty to one another that parallel the rules of chivalry among gentlemen. They belong to a fraternity ruled by laws of honor just as gentlemen have formed a fraternity ruled by the laws of the land and chivalric notions. Although it is tempting to consider Raymond as heroic, the narrator praises and then condemns the thieves as absurd for “wantonly defy[ing] the necessary, though atrociously exaggerated precautions of government in the matter of property, at the same time that they commit an alarming hostility against the whole” (319). Godwin’s portrayal of the conduct code of outlaw thieves as an alternative to the legal system is a narrative technique that Scott employed more extensively in the legal problem novel Ivanhoe. Captain Raymond bears a striking resemblance to Robin Hood who is a character in Ivanhoe.
Although Caleb does not offer a blueprint for a new and better legal system, he expresses his hope in the power of the novel to lead “posterity... to render me a justice which my contemporaries refuse” (Godwin, *Caleb Williams* 59). The novel ends like a *bildungsroman* when Caleb accepts the legitimacy of the court system and curses himself for besmirching Falkland’s name. Caleb concludes: “I have now no character that I wish to vindicate” (434). Rather than recovering his lost character, Caleb accepts that it is lost forever because he revealed his master’s secret and brought dishonor to Falkland. Notwithstanding Caleb’s demoralized concluding comments, his narrative compels the reader to seek legal reform so the injustices in the novel do not persist. Caleb may have to adapt to the unjust legal system that has pursued him, but any reader who believes in justice must act to reform it. While Godwin’s treatise *Political Justice* makes a reasoned argument for changing the economic and political system, his novel *Caleb Williams* appeals to the emotions of the reader who vicariously experiences the numerous injustices portrayed in narrative form. Godwin develops the legal problem novel form in order to exemplify the types of injustice inherent in the legal system. The narrative tactics Godwin introduced in *Caleb Williams*, are the prototype used by Walter Scott and Elizabeth Gaskell in their legal problem novels published in the years after *Caleb Williams*. 
CHAPTER 2

*IVANHOE: DE-MYSTIFYING THE COMMON LAW*

Sir Walter Scott was both a practicing lawyer in Scotland, and a novelist who pioneered the authorship of historical novels about Scotland and England. He published the legal problem novel *Ivanhoe* in 1820, in order to demystify the common law. Scott was interested in legal history and chose to set the novel in 1194 when Richard I shored up his power over England and started the common law system. Simmons notes: “Throughout the story, competing systems of local law are in operation” (174). The Normans, Saxons, outlaws, Templars, and Jews each form a nation within the country of England which is ruled by its own monarch or leader and follows one of five distinct legal systems: (1) Norman chivalric law, (2) Saxon law based on custom, (3) outlaw forest law, (4) Christian canon, and (5) Jewish *halakhah*. The novel establishes that there must be one law and one authority for all inhabitants of the country. Richard gains the loyalty of the Saxons and shores up his authority by expelling the disobedient Templars; making church officials subordinate to the king in legal matters; forming an alliance with the outlaws; and blending the Saxon and Norman laws. England is not merely another Norman country, but a blended Norman-Saxon country with its own authority and laws which will develop into the common law in place at the beginning of the nineteenth century. Thus, *Ivanhoe* portrays the process of nation-building as intricately connected with the origin of common law. Legal systems are the constructs of rulers, not perfect divine manifests. Only a lawyer like Scott could use the narrative techniques developed by Godwin to produce a novel that demystifies the legal system for lay citizens in this manner, laying the foundation for legal reform.

*Ivanhoe* is set in Yorkshire, England, during a pivotal period in English legal history. In 1066, William the Conqueror invaded England from Normandy (France) and defeated the Saxon army at Hastings. Plucknett notes: “The greatest result of the Norman Conquest was
the introduction of precise and orderly methods into the government and law of England. . . . [The Norman conquerors’] gifts for strong administration and for orderly accounting and finance . . . were to have fuller opportunities in the conquered kingdom” (11). In Ivanhoe, Richard and John, the sons of the Norman king Henry II, compete for authority to be King of England. Richard is the current king but his brother John has usurped his authority while Richard was away conducting a crusade. Their competing claims split the Norman nobility into factions each loyal to one of the brothers. The dispute over power between the Norman kings creates a power vacuum that provides opportunities for other groups—outlaws, Templars, and Jews—to set up competing legal systems and authorities.

Like Godwin, Scott includes a trial and competing legal systems in his legal problem novel. Unlike Caleb Williams, only one trial is portrayed in Ivanhoe: the ecclesiastical trial of the Jewish healer Rebecca for witchcraft which is the culmination of a battle between the Templars and King Richard. Lucas Beaumanoir, the Grand Master of the Knights Templar of the Roman Church exploits the power vacuum created when Richard and John are competing for the crown. Templar members take a vow when they join the religious order to eschew vanity and worldly goods, refrain from hunting, read only what their superiors permit, avoid all magic, eat a simple diet, and remain celibate (Scott, Ivanhoe 314, 286). Beaumanoir considers it his duty to force the Templars to obey their vows and he focuses on Brian de Bois-Guilbert who has previously received a dispensation to violate his vows from another grand master (172). Bois-Guilbert repeatedly flouts the rules of his order, such as when he tells Rebecca that she is “subject to my will by the laws of all nations” (198). He kidnaps her, takes her to the Templars’ Preceptory, and constantly pesters her to be his lover.

When Beaumanoir learns that Bois-Guilbert has brought the Jewess to the Preceptory in violation of the laws governing Templars, he concludes Bois-Guilbert is bewitched by Rebecca and tries her as a witch. Fellow Templar, Albert de Malvoisin, argues with Beaumanoir about his authority to conduct such a trial and Beaumanoir replies: “The laws of England . . . permit and enjoin each judge to execute justice within his own jurisdiction. . . . And shall that power be denied to the Grand Master of the Temple within the Preceptories of this Order?—No!—we will judge and condemn” (Scott, Ivanhoe 314). The Templars, who derive their authority from the Catholic Church in Rome, position themselves in contravention to Richard. Beaumanoir relies on “‘the Christian law and our own high office’”
to initiate his own criminal proceedings (311). However, under Norman law, the Templars only have power if the King confers on them “immunities and privileges” (393). The problem with witch trials under church law, known as canon law, is that they are instituted and presided over by church officials applying Biblical notions involving the sacrifice of the innocent to atone for the sins of Church officials. Albert de Malvoisin aptly describes the trial of Rebecca as “a sin offering sufficient to atone for all the amorous indulgences of the Knights Templar” (315). Another reason church officials conducted witch trials is discussed by Scott in his “Letters on Demonology and Witchcraft” published in 1830: “The more selfish part of the priesthood might think that a general belief in the existence of witches should be permitted to remain, as a source both of power and of revenue” (“Letters” VII).

The Templars’ witch trial consists of testimony from unreliable witnesses who offer evidence that is immaterial about matters that are “physically impossible” (Scott *Ivanhoe* 327). Albert de Malvoisin testifies that Bois-Guilbert appeared to be “under some temporary alienation of the mind” because of his attraction to Rebecca (323). Bois-Guilbert refuses to answer questions about his behavior which is interpreted as reflecting the control Rebecca exerts on him (324). A Saxon peasant testifies that Rebecca cured him of palsy and gave him money two years earlier (325). Two of the men-at-arms who have guarded Rebecca testify she sings songs in a strange language, wears unusual clothing, and treated the wound of an injured man (*Ivanhoe*) (327). The narrator notes that the ecclesiastical court requires very little evidence to find the accused guilty of witchcraft: “[l]ess than one half of this weighty evidence would have been sufficient to convict any old woman” (328). Beaumanoir asks Rebecca to respond to the charges against her. Bois-Guilbert passes a scroll to Rebecca which reads “Demand a Champion!” and she states, “I challenge the privilege of trial by combat and will appear by my champion” (329). With this recitation, Rebecca invokes a procedural right afforded by Norman chivalric law for a trial by battle between a representative of the Church and Rebecca’s champion (Plucknett 113). Beaumanoir grants Rebecca “the benefit of our mild laws” and sets a date for the combat (Scott, *Ivanhoe* 331–32). He also has the Judgment recorded in writing and read aloud to the people attending the witch trial (332–333).

The witch trial takes place during a battle for power between Beaumanoir and Richard, which causes the Jews to debate whether to ask Richard to intervene with
Beaumanoir to prevent Rebecca’s trial. Rabbi Ben Samuel raises the issue when he suggests Ivanhoe may obtain a letter from Richard “‘commanding these men of blood, who take their name from the Temple . . . that they proceed not on this purposed wickedness’” (Scott, *Ivanhoe* 336). Rebecca also recognizes Richard’s superior authority over the Church when she tells Bois-Guilbert that he can help her by going to Richard who “‘will listen to my appeal from these cruel men’” (343). Richard arrives at the Preceptory too late to save Rebecca. It is unclear whether he would have helped her if he had arrived on time since Richard has not intervened previously in the novel to prevent local church officials and Saxons from harassing the Jews.

On the day of the combat, Ivanhoe appears for Rebecca but Bois-Guilbert drops dead during the combat without being struck by Ivanhoe. Concluding that God has decided the case in Rebecca’s favor, Beaumanoir releases Rebecca (Scott, *Ivanhoe* 392). Simmons suggests that Bois-Guilbert’s death “leaves the reader free” to consider whether “the medieval law of might, supported by the law of God, may be able to prevail,” but she cautions against ascribing this motive to Scott (181). Bruce Beiderwell is critical of Scott’s resolution of Rebecca’s trial as one of several instances of “a boyish understanding [which] makes justice a simple matter of winning or losing” (84). It appears that Scott painted himself into a corner when portraying the witch trial and relied on an implausible plot device to extract his heroine and end the novel with justice. It is significant that the only trial depicted in the novel is a witch trial. The narrator condemns the witch trials as “stupid bigotry” (315). Simmons notes: “The narrator prompts the reader to consider Rebecca’s trial in the light of English law, even though the trial and ordeal that follows raise questions about natural law and about divine justice” (14). The portrayal of a witch trial which would be considered by nineteenth-century readers as a blatant miscarriage of justice invites readers to regard legal and political reform as natural and desirable means of meeting changing social needs. *Ivanhoe* challenges the notion that any law is sacrosanct.

The Templars’ conflict with Richard is resolved at the end of the novel when Richard withdraws the Templars’ immunities and privileges and expels them from England.

Rebecca’s trial narrative reflects the historic battle between several Norman leaders and the Church during the Middle Ages. William the Conqueror strengthened the (Catholic) Church but restricted its political power (Plucknett 11–12). Prior to William, bishops
conducted church business in the community courts. William directed Church officials to create “their own Courts Christian for [ecclesiastical matters]; . . . and from that day to this the Church has maintained its separate system of courts administering canon law” (12). This is significant because William separated matters of church and state from one another (12), transferring authority for conducting matters of state, including laws, from church officials to the king. William also controlled matters relating to English churches such as who became a bishop, but Pope Gregory VII rejected this usurpation of Rome’s authority (14). Richard’s father, Henry II, reached an agreement with Archbishop Beckett called the Constitution of Clarendon, dividing legal jurisdiction with the Church depending on the subject of the dispute (17). *Ivanhoe* portrays the confusion during the period of time when the Church and the Kings of England were competing for power and the resolution of this conflict by a strong monarch.

The exit of the Templars leaves behind other unsavory members of the Church who are less controlled by Rome. Prior Aymer is a local prelate who concerns himself with attaining wealth for the Church and Friar Tuck is a dubious prelate more committed to the outlaws’ goal of defying the law of the chase than to the duties of a friar. These prelates remain in England and devote themselves to the pursuit of wealth. The outlaw monarch Locksley awards the prior’s jewels to Friar Tuck in order not to tempt the prior with worldly wealth (Scott *Ivanhoe* 291). The local clergy’s connection with money in the novel chronicles another significant legal development in England during the Middle Ages. William replaced “[t]he casual ‘treasure’ of the Anglo-Saxon kings’ with “an Exchequer on business lines” which he used “to keep a firm hold upon the sheriffs and local government generally” (Plucknett 12). *Ivanhoe* refers to the Exchequer who imposes a fine on the Jews (Scott 53). Plucknett explains: “While the Jews were in England . . . [t]hey had their own law and customs and the Crown maintained a special court (a division of the Exchequer) for their enforcement” (572). Richard I established a system for Jews to register mortgage loans (572). The Jews in *Ivanhoe* are subject to the King’s laws administered by the Exchequer of the Jews which Ivanhoe notes is a form of extortion (Scott 53, 58). Prior Aymer, as part of the Exchequer, says “our cellarer and treasurer have dealt largely with [Isaac], and report that his house at York is so full of gold and silver as is a shame in any Christian land” (286). The Jews are fined for engaging in usury because it is illegal and Prior Aymer collects that fine.
In 1179, the Church declared usury a crime, in violation of canon law (Plucknett 286). To prevent the Jews from benefitting from usury, they paid a fine. The body that prohibits usury is the Church, but the fine was supposed to be paid, not to the Church, but to the king. Prior Aymer has collected fines due to the king with impunity while Richard has been away. During the Middle Ages, Jews were alien merchants who lent money to the kings in exchange for the king’s protection: “The position of the alien merchant was always insecure. A sovereign makes a poor creditor . . . [and yet a]liens secured exceptional treatment from the king” (Hogue 25). However, in Ivanhoe, Richard fails to protect the Jews, allowing local prelates to extort fines from them and eventually leading to the Jews’ expulsion from England.

The novel portrays the Jews who, bound by their own laws, could not remain in England without losing their identity because they would receive no protection from the king under the new common law. The Jews in the novel behave more nobly than the Gentiles and follow a set of laws that are portrayed favorably. Rebecca proudly proclaims herself “sprung from a race whose courage was distinguished in the defence of their own land” and claims she, as “the daughter of God’s chosen people,” is prepared “to die as bravely as the proudest Nazarene maiden” (Scott, Ivanhoe 250). Jewish identity stems from descent from the Biblical patriarchs Abraham, Isaac, and Jacob, setting Jews apart from the Saxons and Normans. The Jews have their own monarch, God, and their own laws, called halakhah, based on the Old Testament and scholarly writings by rabbis including the Talmud. Halakhah requires them to extend hospitality to other Jews and to remain separate from Gentiles except in limited situations. When Isaac is released by the outlaws far from his home, he finds his way to a village where a rabbi lives: “Nathan Ben Samuel received his suffering countryman with that kindness which the law prescribed, and which the Jews practised to each other” (301–02). Rebecca and Isaac argue whether Jewish law permits them to carry the wounded Ivanhoe to their home and treat him. Isaac notes: “he is a Christian, and by our law we may not deal with the stranger and Gentile, save for the advantage of our commerce” (231). Rebecca counters: “we may not indeed mix with them in banquet and in jollity; but in wounds and in misery, the Gentile becomes the Jew’s brother” (231). Isaac wishes he “knew what Rabbi Jacob Ben Tudela would opine on it” but agrees to move Ivanhoe to his home (231). As they prepare to move Ivanhoe, Isaac realizes that their actions
may violate English law: “‘what if the youth perish!—if he die in our custody, shall we not be held guilty of his blood, and torn to pieces by the multitude?’” (232). This exchange reveals the precarious position of the Jews who are bound by both halakhah and the king’s laws. In this scene, Jewish laws are portrayed as more humane, and therefore legitimate, than the king’s laws which allow punishment of people who heal the wounds of others. Rebecca learned to practice “healing arts” from a famous Jewess named Miriam who had fallen “a sacrifice to the fanaticism of the times” (232). The narrator informs the reader that Christians condemned Jews for practicing medicine because they regarded it as magic; but Christians sought medical assistance from Jews in times of need (232). Miriam was “‘burned at a stake, and her ashes scattered to the four winds’” for witchcraft when she practiced the healing arts (311). Thus, the ecclesiastical and king’s legal systems fare poorly when compared to halkhah in Ivanhoe.

The Jews must be on their guard in their dealings with all the subgroups of English subjects because all the Christian characters are xenophobic and the few who help the Jews, do it either for money, or to repay the prior kindness of the Jews. There are three attempts to convert Rebecca and Isaac: Beaumanoir urges Rebecca to convert after he condemns her (Scott, Ivanhoe 329); Rowena urges Rebecca to remain in England and become Christian (400); and Friar Tuck claims he has converted Isaac during the night of the battle at de Bracy’s castle (273) (Costantini 476). These attempts at conversion lead Rebecca to conclude, “‘there is a gulph betwixt’” the Jews and Christians in England and “‘our breeding, our faith, alike forbid either to pass over it’” (Scott, Ivanhoe 399). When Beaumanoir asks Rebecca why she would choose death rather than violate the laws of Moses, she replies “‘It was the law of my fathers . . . it was delivered in thunders and storms upon the mountain of Sinai’” (330). Rebecca chides de Bois-Guilbert that the Jews:

number names amongst us to which your boasted northern nobility is as the gourd compared with the cedar—names that ascend far back to those high times when the Divine Presence shook the mercy-seat between the cherubim, and which derive their splendour from no earthly prince, but from the awful Voice, which bade their fathers be nearest of the congregations of the Vision—Such were the princes of the House of Jacob. (344)

The trial of Rebecca shows the Jews that the Norman kings will not protect them from Gentiles who are intolerant of their faith and determined to convert them to
Christianity. The Jews’ faith is their national identity. As Rebecca tells Rowena: “‘I may not change the faith of my fathers like a garment suited to the climate in which I seek to dwell’” (400). The Jews leave England because the resulting law imposed by Richard does not afford them freedom to remain loyal to their monarch, God, or to follow halakhan which they consider to be God’s laws. At the end of Ivanhoe England is a Christian country where the religious law is administered by the local church officials and the secular law by King Richard. The Roman Church officials and Jews are exiled.

The exile of the Jews in Ivanhoe reflects the expulsion of Jews from England from 1290–1656 (“The History of the Medieval Jews of England”). The favorable treatment of Jewish characters and halakhah in Ivanhoe reflects a change in the attitudes of the British toward Jews over time. In the late sixteenth century, English Protestants developed a new perception of Jews as “strategic allies of Protestant England against Turkish power, Muslim expansion and Catholic retrenchment” (Costantini 473). This explains Scott’s condemnation in Ivanhoe of the xenophobia of the Middle Ages. Scott’s treatment of the topic supports the argument that Ivanhoe is as much about medieval England as it is about England in the early nineteenth-century when the novel was written. The novel shows how the common law was developed in a country that denied religious diversity and the country consequently lost the benefit of the healing arts practiced by the Jews. If England is to be a modern nation of diverse people, the law must be reformed. Scott’s portrayal of the way the Jews were treated in medieval England proves that the law resulting from a society holding discredited notions regarding minorities should be reformed to reflect modern enlightenment.

A third group of English residents who are not identified as either Normans or Saxons is called “outlaws” and this group recognizes Locksley (also known as Robin Hood) as its leader. Godwin’s band of thieves led by Raymond in Caleb Williams is the literary precursor of Robin Hood’s band of outlaws in Ivanhoe. Scott portrays Robin Hood and his band of thieves favorably, which contradicts accounts by other legal scholars. Blackstone describes the band of thieves as having “committed great outrages in the reign of Richard the First on the borders of England and Scotland” (4: 244) and Edward Coke describes Robin Hood “as being nothing more than a brigand who lived in woods and deserts, by robbery, burning of houses, felony, waste and spoile” (Radzinowicz and Hood 49). Rather than portray Robin Hood at odds with Richard like Blackstone contends was the historical fact, Scott portrays
Robin Hood as violating an unjust law and as joining forces with Richard to help form a strong England. Scott’s decision to describe Robin Hood as a heroic figure is indicative of his willingness to challenge the legal establishment and provides support for an argument that he favors legal reform when necessary.

Scott portrays Robin Hood as the folk hero of the people, in much the same way that Joseph Ritson does in a treatise about Robin Hood published in 1795. Ritson’s biography of Robin Hood is the result of his culling through numerous historical and literary sources. Scott gives Robin Hood the name “Locksley” which Ritson indicates is the name of the estate on which Robin Hood was born (ii). Robin Hood’s real name was Robert Fitzooth and he was descended from a Norman earl who came to England with William (ii, xviii). Although he was noble, he wasted his money and became “outlawed for a debt . . . [and] sought asylum in the woods and forests” (iii). He became the leader of a band of about 100 robbers who lived in the forests and sustained themselves through hunting and robbing wealthy travelers (iii).

Ritson’s portrayal of Robin Hood contrasts sharply with that of Blackstone and Coke: “Robin Hood: a man who, in a barbarous age, and under a complicated tyranny, displayed a spirit of freedom and independence which has endeared him to the common people, whose cause he maintained (for all opposition to tyranny is the cause of the people)” (xi). William E. Simeone notes: “to Scott and his generation Robin Hood was a hero of the national past. For a generation looking for the beginnings of the nation, Robin Hood became an ancestral hero fighting to establish in England traditions by which free and democratic Englishmen thought they should be governed” (233). Scott’s portrayal of a heroic Robin Hood alongside Richard shows the imperfection of the Norman monarch and, consequently, the imperfection of the common law he created.

It is Saxon law that established the status of the “outlaw.” Under the Saxon law, when someone committed a crime, the victim had to complain to the local officials, a process known as “hue and cry” (Plucknett 406). If the suspect had fled, he would be indicted and the sheriff was supposed to arrest him, “but it generally happened that arrest was impossible, and so . . . the long procedure of outlawry began” (406). The Saxons considered an outlaw as convicted of the crime alleged against him. He could be hanged for the outlawry when he was caught without further hearings (406). Robin Hood and the other outlaws do not own or even hold any land. Although they appear to be a mixture of Saxons and Normans, they flout
the Norman laws prohibiting theft and hunting in the forests, and hence they live with the constant threat of arrest and execution.

The outlaws are simultaneously outside the established legal system and governed by their own legal system similar to Raymond’s band of thieves in Caleb Williams. Locksley asks Friar Tuck why he allowed Richard into his cabin: “‘Hast thou forgot our articles?’” (Scott, Ivanhoe 168). Outlaws are prohibited from assisting outsiders. The outlaws take property from people who pass through their jurisdiction, the forest. The Normans call them “thieves” but one could argue that the only difference between the outlaws and the barons is the barons have the king’s permission to take the property of others and the outlaws do not. The outlaws have rules to determine from whom they may steal and how the bounty is to be distributed. Cedric and Athelstane do not fear the outlaws because they are “generally supposed to respect the persons and property of their countrymen” (159). The outlaws respect some Saxons but have no compunction about stealing from Normans, clergy, and Jews. As Ritson notes of the historical Robin Hood, he held “all the clergy . . . in decided aversion” but “he was a man of exemplary piety and retained a domestic chaplain (Friar Tuck, no doubt)” (ix).

The outlaws also take “possession of the forests and the wastes,” defying “the severe exercise of the [Norman] forest laws” or laws of the chase, which set aside deer and wild boar in forest areas for the exclusive use of the king and aristocrats (Scott, Ivanhoe 66). When Richard, disguised as the Dark Knight, visits the outlaw Friar Tuck, he notes that Tuck is strong enough to hunt for his own food rather than to rely on the charity of the keeper of the chase, but Tuck denies violating the law, proclaiming he is loyal “to the king and law, and were I to spoil my liege’s game, I should be sure of the prison” (146). Friar Tuck’s hut is well stocked with venison (146) and he has implements for hunting: “two or three good long bows, a cross-bow, a bundle of bolts for the latter, and half-a-dozen sheaves of arrows for the former” (147). These hunting implements make it clear he and the other outlaws ruled by Locksley hunt illegally in the forest in violation of the laws of the chase. Locksley (Robin Hood) is a national hero in Ivanhoe for leading the outlaws to flout the unfair laws of the chase.

The outlaws are like a nation within the nation of England. The historical Robin Hood ruled the forests according to Ritson: “In those forests, and with this company, he for many
years reigned like an independent sovereign; at perpetual war indeed, with the King of England, and all his subjects, with an exception, however, of the poor and needy” (iv). Perhaps one of the most surprising elements of *Ivanhoe* is the friendship that develops between Richard and the outlaws who hunt on the King’s land without permission and steal from his subjects. Richard cannot rely on the loyalty of Norman barons who have pledged their loyalty to his brother and are intent on killing him, so he forms an alliance with the Saxons and outlaws to attack Bracy’s castle. After the battle at Bracy’s castle, Locksley presides over a gathering of the outlaws under a designated oak tree in a scene that is reminiscent of a king’s court (Scott, *Ivanhoe* 271–72). The disguised Richard sits on Locksley’s right side and Cedric on his left side (272). Locksley explains to the outsiders: “in these glades I am monarch—they are my kingdom” and he claims to be superior to mortal man (272). As the “monarch” of the forest, he distributes the property the outlaws have taken from Bracy according to his own law: one tenth to the church, part to “a sort of public treasury,” part to “the widows and children of those who had fallen,” and the remainder divided between the outlaws based on “their rank and merit” (278). Richard is surprised that the outlaws are “so regularly and equitably governed” (278). Simmons observes: “Robin Hood and his men . . . model good law [in the forest] to [Richard] the man who has failed to protect it at [the] national level” (176).

This scene has significance to the nineteenth century reader of *Ivanhoe* because it invites comparisons between monarchs and the more republican Parliament. Richard grows to be a better king because of the lessons he learns from Robin Hood about the unfairness of the forest laws. Historically, there is nothing to indicate that King Richard tolerated violations of the law of the chase, but the fictional account in *Ivanhoe* serves to legitimize King Richard and his progeny as the lawful and moral heirs to the British throne. The portrayal of King Richard’s meeting with the outlaws and hearing their grievances about the laws of the chase shows the process of imposing a law and then adjusting the law to fit the needs of the governed. The reform of the laws of the chase is an examples of how laws must be reformed when they do not serve the governed. In Scott’s era, there was a debate about whether the common law should be amended or supplanted by statutory law. Scott’s portrayal of the harsh results of the old laws of the chase provides an example of prior legal
reform in England which provides a precedent to support legal reform in the early nineteenth century.

Similarly, Godwin’s band of thieves divide their spoils according to an agreed ritual. Unlike Godwin’s band of thieves who are democratic, Locksley is monarchical. Locksley engages in negotiations with members of other groups as well. For example, after Brian de Bois-Guilbert kidnaps Rebecca and takes her to the Priory, Locksley attempts to help Isaac recover Rebecca. He convinces Isaac to pay the outlaws a ransom and convinces Prior Aymer to write a letter to Bois-Guilbert urging him to release Rebecca (Scott Ivanhoe 290–91). When he takes these actions, Locksley exercises authority over members of the Church and Jews, further encroaching on the authority of King Richard.

While Locksley is negotiating for Rebecca’s release, Richard travels through the forest disguised as the Black Knight. He encounters and fights Waldemar Fitzurse, a Norman noble intent on killing him, while his companion Wamba blows a horn to summon Locksley and the outlaws. Locksley arrives after Richard has subdued Fitzurse. Richard removes his disguise and addresses Locksley: “‘Thou bearest an English heart . . . and well dost judge thou art the more bound to obey my behest—I am Richard of England!’” (Scott, Ivanhoe 359). The outlaws kneel to Richard, signifying their allegiance to him (360). Richard is then in a position to create and enforce laws requiring his subjects’ loyalty.

Richard uses the law of treason to assert his divine and absolute authority. He orders Fitzurse to leave England for his “traitorous deed” (Scott, Ivanhoe 359); orders that Albert de Malvoisin be arrested for High Treason (392); accuses Beaumanoir with allowing a “treasonable conspiracy” (393); and teases Ivanhoe that he has committed treason by engaging in combat in violation of the King’s orders (363). Citizens of England must bear allegiance to the king: “Allegiance is the tie . . . which binds the subject to the king, in return for that protection which the king affords the subject” (Blackstone 1: 354). Blackstone observes: “Every offence therefore more immediately affecting the royal person, his crown, or dignity, is in some degree a breach of this duty of allegiance, [including treason which is]
betraying, treachery, or breach of faith” (4: 74–75). During the Middle Ages, the crime of treason arose from Germanic and Roman law (Bellamy 1). J. G. Bellamy observes: “Throughout the later middle ages there was a tendency for European kings to seek, even if they did not readily gain, the power of absolutism” (9). If one takes up arms against the king and loses, the punishment is severe.

Ivanhoe discusses Richard’s mercurial nature with Locksley and the danger that he may interpret joking as treason: “‘they who jest with majesty, even in its gayest mood, are but toying with the lion’s whelp, which, on slight provocation, uses both fangs and claws’” (Scott, Ivanhoe 366). This reference to Richard draws on Richard’s nickname of “The Lionhearted” and the blessing by Jacob in the Bible on his son Judah: “Judah is a lion’s whelp . . . the sceptre shall not depart from Judah . . .” (The Holy Bible, King James Version, Gen. 49. 9–10). Richard does not accuse the outlaws of treason, even though the outlaws have violated his laws of the chase. In fact, he tells Locksley “‘be assured, brave Outlaw, that no deed done in our absence, and in the turbulent times to which it hath given rise, shall be remembered to thy disadvantage’” (Scott, Ivanhoe 360). He is indulgent of the outlaws, perhaps reflecting that Scott agreed with Ritson’s reasoning that Robin Hood did not commit treason: “It is not, at the same time, to be concluded that he must, in this opposition, have been guilty of manifest treason or rebellion; as he most certainly can be justly charged with neither. An outlaw, in those times, being deprived of protection, owed no allegiance” (Ritson iv). It is doubtful that the historical King Richard believed this to be the case; however, this is how he is portrayed by a Scottish writer who considers Robin Hood a hero. One reason Scott may have portrayed Robin Hood more favorably than Blackstone and Coke is that Robin Hood was regarded in Scotland as a hero similar to the Scot folk hero William Wallace (xii).

9 Godwin was also concerned with the prosecution of political protesters for treason based on a very broad interpretation of the treason law during his era. He wrote a treatise entitled Cursory strictures on the charge delivered by Lord Chief Justice Eyre to the Grand Jury, October 2, 1794, in which he notes that the law of treason has been set forth by statute to prohibit “levying war against the King within the realm, and the compelling or imagining the death of the King.” He argues that the court’s extension of that prohibition to cover “conspiracy to subvert the monarchy” is inappropriate because it makes previously lawful conduct unlawful (4–13).
Richard’s joking about treason when he is with the outlaws and Ivanhoe, may indicate
Richard’s recognition of the important role these groups must play in the future of the nation.
He forgives Friar Tuck for hunting in the forest and promises him a license to hunt there in
the future (Scott, Ivanhoe 362).

Richard’s biggest challenge is gaining the allegiance of the largest group of residents
in England and its former rulers: the Saxons. At this time in history, England is “a country
inhabited by two nations, the Franci and the Anglici, where a dominant minority introduced
values, rules and a language different from those of the native masses” (Caenegem 4). The
Saxons in Ivanhoe have their own law based on local customs which the Norman invaders
have replaced with a different law based on chivalry. Ivanhoe presents the clash between the
Norman and Saxon laws and Richard’s combining of the two systems into the common law
of England. The Normans speak French and introduce to England a French legal system:
“French was the language of honor, of chivalry, even of justice” (Scott, Ivanhoe 17). The
Anglici or Saxons in Ivanhoe cannot agree how to deal with their Norman conquerors and
divide into two camps: the older Saxons deny the Norman kings’ authority, and “the younger
race . . . like Ivanhoe [break] down many of the barriers which had separated for half a
century the Norman victors from the vanquished Saxons” (371). Some Saxons openly defy
the king such as when a banner hanging above the gate of Athelstane’s castle bears the
symbol of the former Saxon king Hengist (369).

The most troubling Norman law for Saxon landholders was that regarding the
ownership of real property. William the Conqueror introduced French property law to
England when he had the kingdom surveyed and recorded the owners of each property in the
Domesday Book (Plucknett 12). The Domesday Book listed all properties as owned by the
King, but held by the feudal lords: “This insistence of the Norman and succeeding kings that
they were the undisputed lords, direct or indirect, of every piece of land in the country . . .
provided a sure foundation for the growth in later times of the common law” (13). This form
of land ownership rendered barons the vassals of the king. The novel begins with an
explanation that the Saxon gentry “who, by the law and spirit of the English constitution,
were entitled to hold themselves independent of feudal tyranny, became now unusually
precarious” (Scott, Ivanhoe 16). Feudalism also underlies the Norman “laws of the chase”
which prohibit the killing of animals without the king’s permission, and these laws appear
unjust to the Saxon Cedric (16). Even a dog is subject to the laws of the chase: “Malvoisin’s keeper of the chase” lames Cedric’s dog Fangs because Fangs “chased the deer contrary to his master’s right, as warden of the walk” (42).¹⁰ This incident leads Cedric to worry that “some neighbouring baron” may harm his property (35–36). Scott identifies the Saxons as the common people and the laws of the chase as unfair to the Saxons.¹¹

In *Ivanhoe*, Cedric’s position as a Saxon landholder is at risk because the Norman kings claim the right to transfer his land to Norman barons. A Saxon landowner risks losing his land if he is disloyal to the King. Wilfred accepts this feudal law and serves as Richard’s knight, which leads Cedric to disinherit Wilfred because “he stooped to hold, as a feudal vassal, the very domains which his fathers possessed in free and independent right” (Scott, *Ivanhoe* 129). Cedric claims that Wilfred’s filial disobedience when he vowed allegiance to Richard is “a crime severely punishable” under Saxon law (128). Cedric has punished Wilfred by disinheritating him; thus Wilfred is known as “the Disinherited Knight” when he competes in the tournament at Ashby. Scott uses the legal status of disinheritance in a manner commonly evident in subsequent Victorian novels, as a way “to get a hero started off on his own” (Reed 161). Wilfred represents the English people, caught between the demands of the Normans and the Saxons. He has two names: “Wilfred” which is his Saxon name, and “Ivanhoe” his Norman name.

Ivanhoe performs knight service to Richard, a requirement introduced in England by Norman kings. During the period “from the Conquest in 1066 to about the year 1166, [knight service] was a living institution. The tenant did military service in the King’s host

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¹⁰ The neighboring baron’s name “Malvoisin” means “bad neighbor” in French. By using names which have derogatory meanings in French, Scott mocks the way that the English language considers the French word for an object as more proper than the Saxon word. He alludes to this in the beginning of the novel, when the Saxon servants Gurth and Wamba note that a pig is called a “swine” (Saxon word) when alive, but “pork” (Norman word) when it is served as a meal: “‘so when the brute lives, and is in the charge of a Saxon slave, she goes by her Saxon name; but becomes a Norman, and is called pork, when she is carried to the Castle-hall to feast among the nobles’” (21).

¹¹ The Saxons’ dissatisfactions with Norman laws of the chase were addressed in 1217, shortly after the events depicted in *Ivanhoe*, when King Henry III signed “The Charter of the Forest, issued with the revised Magna Carta . . . re-establish[ing] rights of access to the forest for free men” (“Laws of the Forests”).
accompanied by the number of knights required by his tenure” (Plucknett 501). In *Ivanhoe,* French laws of chivalry provide that knights must be loyal to the king and be ever ready to fight on his behalf. They must compete in tournaments to establish and maintain their status and to acquire more lands and goods. The laws of chivalry govern staged tournaments and award the horse and armor of the vanquished knight to the victor (Scott, *Ivanhoe* 94). Wilfred explains: “the pure light of chivalry . . . alone distinguishes the noble from the base, the gentle knight from the churl and savage. . . it is . . . the stay of the oppressed, the redresser of grievances, the curb of the power of the tyrant—nobility were but an empty name without her” (249).

The term “chivalry” continued to be associated with the common law system of the monarchy during the eighteenth and nineteenth centuries and both *Caleb Williams* and *Ivanhoe* expose the fact that noble chivalric ideals are used by unscrupulous landowners for tyrannical purposes. Just as Falkland relies on notions of chivalry to harm others in order to protect his name even when he has behaved dishonorably, several Norman barons in *Ivanhoe* behave in ways that fall short of the chivalric ideals. Both Falkland and the Norman barons are protected by the law. Front-de-Boeuf threatens to roast Isaac over coals in order to steal his money (Scott, *Ivanhoe* 182); Maurice de Bracy’s father rapes Ulrica (194); and Maurice de Bracy threatens to force Rowena to marry him (188). Despite their misdeeds, these Norman barons are protected by John until the true king, Richard, returns to take control of England. Scott published “An Essay on Chivalry” in 1818, wherein he discusses the ideals of chivalry and how they suited the Middle Ages because they were a code of conduct primarily for initiating young men into warfare. He concludes that elements of chivalry remain in society:

> Its effects are rather to be sought in the general feeling of respect to the female sex; in the rules of forbearance and decorum in society; in the duties of speaking truth and observing courtesy; and in the general conviction and assurance, that, as no man can encroach upon the property of another without accounting to the laws, so none can infringe on his personal honour, be the difference of rank what it may, without subjecting himself to personal responsibility. (124–25)

Scott approves the positive ideals of chivalry while acknowledging that a law based on chivalry (like the common law) which was suitable for the Middle Ages, is not suitable for a modern country. Like Godwin, Scott’s portrayal of disreputable Norman barons acting
with impunity under the color of authority granted by the laws of chivalry makes the case that chivalry should no longer be a part of British law.

In *Ivanhoe*, the Saxon legal system has a means, parallel to Norman tournaments, for members of the gentry to increase their property, and it involves kidnapping and ransom. When Norman barons kidnap Cedric, Athelstane, and Rowena, all three enter into discussions of ransom with their captors (Scott, *Ivanhoe* 178, 189, 227). This practice of kidnapping and demanding ransom may derive from the Anglo-Saxon criminal law which involved “progress from warfare—the feud between the two kin of the criminal and the injured—to money compensation” (Plucknett 401). When parties clashed, the Saxons would allow the victim to fight the person who harmed him and, if the victim was successful, he could kill the person who harmed him or demand money damages from him (401). Similarly, the novel portrays individuals kidnapping their enemies and demanding money in lieu of killing them.

Saxon criminal law also relied on trial by ordeal to determine guilt. Trial by ordeal requires the accused to hold a hot iron or to put his hand in boiling water and guilt is determined by whether the accused’s hand heals within three days (Plucknett 111). “The Norman Conquest brought one great innovation—trial by battle . . . the battle served as the ordeal” (403). *Ivanhoe* portrays the Saxons as having adopted trial by battle in place of ordeal by this time in history. When Athelstane is imprisoned by Front-de-Boeuf, he throws down his glove and challenges Front-de-Boeuf to combat, but Front-de-Boeuf does not release Athelstane (Scott, *Ivanhoe* 227). He states he will accept such a challenge in the future if Athelstane is free, thus, flouting Saxon and Norman law. The outlaws also engage in trial by combat. When a thief disagrees with Locksley about whether to steal Ivanhoe’s money from Gurth, the matter is settled by a fight between the outlaw and Gurth using poles (106). On another occasion, the disguised Richard and Friar Tuck engage in a humorous combat over the fate of Isaac (281). In this latter scene, Richard abides by the blended Norman-Saxon law of combat. Thus, even before Richard begins the process of combining the two legal systems, the Saxons accept the Norman custom of trial by battle because it is similar to the Saxon trial by ordeal. Trial by battle was not repealed in England until 1819, the year before *Ivanhoe* was published (Plucknett 668).
Another conflict between the two legal systems in *Ivanhoe* occurs when the Norman king attempts to force Rowena, a Saxon princess, to marry a disreputable Norman baron. Cedric wishes to join his niece Rowena and Athelstane in marriage to resolve a conflict over who is the heir to the Saxon monarchy but he does not have the power to decide the issue for her (Scott, *Ivanhoe* 157). Under the Saxon system of wardship, Rowena is allowed to choose her husband because her father is deceased. Rowena refuses to marry Athelstane, thus crushing the hopes of the Saxons for a resurgence of their power and monarchy. However, under the Norman wardship law, the King has the right to determine who may marry Rowena because she is the child of a deceased baron (Plucknett 505). King John decides Rowena is to marry Maurice de Bracy and Bracy informs Rowena that marrying him is the only way she will attain nobility (Scott, *Ivanhoe* 188). Shortly after this conversation between Bracy and Rowena, the novel condemns barons like Bracy, who are “capable of excesses contrary not only to the laws of England, but to those of nature and humanity” (192). Some Norman barons “acknowledged no law but their own wicked pleasure, and not only despoiled the conquered Saxons of their lands and their goods, but invaded the honour of their wives and of their daughters with the most unbridled licence” (192–93).

The conflict between the Normans and Saxons and their respective laws is resolved when Rowena chooses to marry Ivanhoe and Cedric consents to the marriage, in part, because of “the personal attentions of King Richard” to Cedric (Scott, *Ivanhoe* 397). Richard blesses the wedding of Rowena and Ivanhoe in a move that takes into account Saxon customary law and Norman law. This begins the blending of the two laws to create the common law. Arthur R. Hogue notes in *Origins of the Common Law*, “Henry II, Richard the Lionhearted, and John . . . created the legal system” and they acknowledged “they could not invade the customary legal rights of their subjects; the king is under law, is limited by the law” (31–32). Richard proves himself worthy of being the monarch of the Saxon landowners prompting the Saxon barons like Cedric and Athelstane to accept Richard as their ruler and

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12This plot device is similar to Godwin’s portrayal of Tyrrel’s unjust demands on Emily to marry Grimes in *Caleb Williams*. 
the feudal system imported to England by William (Scott, *Ivanhoe* 375, 380). Graham McMaster, observes that the novel portrays “how an allodial proprietor (Cedric) finally enters into the feudal system because it is his only protection against lawlessness” (64). Cedric forgives Wilfred and returns Wilfred to his rightful place in Saxon society (Scott, *Ivanhoe* 375). The Saxons are like the protagonists of a *bildungsroman* who encounter a property ownership and social system at odds with their system and eventually acquiesce to follow the new system in order to secure their position within the new monarchy.

*Ivanhoe* presents the resolution of a clash between inhabitants of England loyal to different monarchs and following different laws. Richard ejects groups not loyal to him and secures the loyalty of the Normans, outlaws, and Saxons, bringing peace to the troubled land. During the battle of the groups, their respective legal systems are considered by Richard and he chooses to blend the Norman and the Saxon laws as his legal system. The novel thus provides a historical understanding of the origins of the common law and educates the reader that it is a human construct and a compromise reached by Richard to build a nation. Scott’s legal problem novel, like Godwin’s, removes the air of mystery and awe that the law may have had for the public. By doing so, Scott permits the reader to see the possibility of, indeed the necessity of, reforming law when societal needs change.

Published during the period between the French Revolution and the Revolutions of 1848, *Ivanhoe* touched on important concerns of his time regarding whether Parliament should reform common law injustices in order to avoid a revolution in Britain. If common law is, as Scott demonstrates, an ancient legal system reflecting outdated notions of chivalry connected with feudalism devised by the king to rule xenophobic citizens, it should be replaced or reformed to meet the new capitalist economy and tolerant citizenry. *Ivanhoe* appears to be a historical fiction meant to entertain the reader, but it is a bold political novel which undermines myths that the law is infallible. Scott glorifies the character most outside

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13“Allodial” means: “free; not subject to the rights of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal” (“Allodial”).
the law, Robin Hood, and re-affirms the fact that laws must serve men and that monarchs must not tread on the rights of their citizens.
CHAPTER 3

MARY BARTON: MAKING A CASE FOR LEGAL REFORM

In *Mary Barton*, published in 1848, Gaskell employs the narrative techniques of the legal problem novel introduced by Godwin; however, unlike Godwin, Gaskell offers solutions. Gaskell almost dismisses the possibility of obtaining justice through parliamentary action, then shows how the judicial process does not offer any better hope of improving social conditions or dispensing justice. Her assessment of the judicial process is withering and its vehemence striking, leaving justice to be achieved only in the kind of world envisioned by the socially-engaged realist novel. Like Godwin, Gaskell “tries” the criminal justice system by telling a story of a fictional criminal trial brought against an innocent man. She establishes that the novel is a better vehicle to achieve justice than the legal system because the novel considers evidence which is excluded by the court. Gaskell also portrays an alternative system for redressing wrongs between men similar to Godwin’s prototype legal problem novel. However, Gaskell’s alternate system of judgment is based Christian teachings which allow for rehabilitation and reconciliation rather than punishment. Gaskell goes further than both Godwin and Scott because her novel urges its middle class readers to work for social justice. *Mary Barton* develops the legal problem novel from a criticism of, or exposition on, the legal system, to a vehicle for reform which distinguishes it from *Caleb Williams* and *Ivanhoe*.

In *Mary Barton*, the reader encounters the noble poor. These are people who want to work and do not want to live on charity. Susan Zlotnick notes that Gaskell “underscore[s] the
material sufferings engendered by unemployment” (68).\textsuperscript{14} The novel begins with John Barton and his wife enjoying a day in the countryside with the Wilsons. John lays his handkerchief on the ground for the women to sit on and he takes one of the Wilson babies so the women can visit (Gaskell 9). Subsequently, John’s wife, Mary, dies in childbirth and his daughter hears “the sobs of her father’s grief” (26). But the great tragedy of John’s life is the starvation death of his son Tom. John is a very proud man. When he is unable to find work, Mary asks him about applying for relief from the Trade Union. John becomes angry: “I don’t want money, child! D—n their charity and their money! I want work, and it is my right. I want work” (142). The characters speak in a Lancashire dialect that the middle class reader may regard with derision, but Gaskell provides extensive footnotes showing how the characters’ words “had their roots in the very origins of the language and that many of them could be found in the works of respected authors” (Wilkes 147). In this way, Gaskell presents the poor as dignified and eloquent, lending veracity to their arguments.

One of the most poignant depictions of the suffering of the poor is that involving the Davenports. The Davenports live in the cellar of a house on an unpaved road full of “household slops of every description” (Gaskell 73). Gaskell stresses that “human beings lived” in the cellar where “the smell was so foetid as almost to knock [visitors] down” (74). John Barton nurses Mr. Davenport dying of a fever, Mrs. Davenport dying of starvation, and their starving baby (76). Wilson opens a door in the home which leads to “a back cellar, with a grating instead of a window, down which dropped the moisture from pigsties, and worse abominations. It was not paved; the floor was one mass of bad smelling mud. It had never been used . . . nor could a human being, much less a pig, have lived there many days” (78–79). Once she establishes the misery of the poor, Gaskell explores the causes of their poverty and possible solutions.

\textsuperscript{14} Zlotnick makes this observation when contrasting the “social condition” novels written by female novelists with those written by their male counterparts in the Victorian era. Men like Carlyle saw the Industrial Revolution as bad for workers, while Gaskell and Brontë did not condemn the Industrial Revolution itself, but focused on the market conditions that led to periods of unemployment (68).
These noble poor are crushed by circumstances outside their control due to legislation passed by Parliament. Gaskell relates how trade wars during “the terrible years 1839, 1840, and 1841,” caused the prices of necessities to increase as unemployment rose (104). Gaskell advocates in the preface of the first three editions of *Mary Barton*: “whatever public effort can do in the way of merciful deeds, or helpless love in the way of ‘widow’s mites’ could do, should be done, and that speedily, to disabuse the work-people” of the belief that no one cared about their suffering (Daly 4). Gaskell changes this sentence in the fourth edition of *Mary Barton* published in 1854, adding “legislation” to the sentence: “whatever public effort can do in the way of legislation, or private effort in the way of merciful deeds” (4). No explanation is offered for the addition of the word “legislation;” however, it may reflect that she was more confident about her role as an advocate for legislative change after the success of her novel. At the time depicted in her novel, however, legislation was unavailable as a solution to the social problems it had caused it.

In *Mary Barton*, John Barton is a delegate of the Chartist movement who goes to London to speak to Parliament about the suffering of the working men of Manchester. The Manchester delegates go to London because “[t]hey could not believe that government knew of their misery: they rather chose to think it possible that men could voluntarily assume the office of legislators for a nation who were ignorant of its real state” (Gaskell 105). When Parliament refuses to allow the workers’ representatives to speak, it embitters John Barton: “‘As long as I live, our rejection of that day will abide in my heart; and as long as I live I...”

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15 In 1815, Parliament passed the Corn Laws which imposed a tariff on grains imported to Britain raising the cost of food in Britain (Matus xi). In retaliation, other countries enacted prohibitions on imports of other items, like textiles, from Britain, which led to a large loss of factory jobs in Manchester (Fryckstedt 19). The middle class formed the Manchester Anti-Corn Law Association in 1838 to seek the repeal of the Corn Laws, but the laws were not abolished until 1846, and the depression lasted until 1848 (Fryckstadt 20).

16 The Penguin edition of *Mary Barton* uses the third edition published in 1849 (Daly xxxii).

17 The Vintage edition of *Mary Barton*, uses the fourth edition published in 1854 (copyright page).

18 English workers drew up the People’s Charter in 1838 to provide workers with the right to vote and to serve in public office. The Chartists were turned away when they went to London in 1839 and 1842, dashing the hopes of the workers for a legislative response to their suffering (Fryckstadt 19).
shall curse them as so cruelly refused to hear us”’’ (126). Gaskell invokes the Biblical parable of Dives and Lazarus to support John Barton’s indignation and to impugn Parliament (123). Parliament is the rich Dives (who dies and goes to Hell) while Barton is the poor wretched Lazarus (who, in the parable, dies and goes to Heaven).

After establishing that it is unlikely that Parliament will act to alleviate the suffering of the poor, the novelist turns her attention to the arm of the government responsible for justice—the courts—for a remedy for the working poor. Grossman observes: “If Gaskell sought justice for the working classes, she would have to outflank purely legislative politics . . . Gaskell thus seized upon a different political side to the story: the judicial” (128). He notes that more than 3,500 members of the Chartist movement were tried in English courts from 1839–48, so the Chartist cause was associated with legal trials being conducted at the time Gaskell wrote Mary Barton (126–27). “The Chartists overwhelmingly saw themselves as living at the end of a long history of governmental tyranny” (127–28). In Mary Barton, the criminal justice system is unable to alleviate the social problems arising from the Industrial Revolution. In fact, the working poor are abused by the criminal justice system. Jem Wilson is arrested and tried for a murder he did not commit because the judicial system represses truth, seeks vengeance, jumps to conclusions, treats witnesses badly, and forces those accused of crime to prove their innocence.

From the very beginning of the process, the initial fact-finders—the police—fail to do their jobs properly because they serve only the wealthy in their community and repress the poor. During the years between the publications of Caleb Williams and Mary Barton, cities developed police forces to investigate and prosecute crime.19 Despite great changes in the organization of the police agency, the police in Mary Barton, like the private policeman Gines in Caleb Williams, are mere tools of the wealthy who repress ordinary citizens. The first instance of police repression occurs when police officers prevent John Barton and the

19 Caleb Williams reflects “Godwin’s anxieties about . . . the ‘extraordinary and dangerous powers’” the government began to exercise in the late eighteenth-century and the movement to create police forces (Bailey 529).
other delegates in London from crossing the road to get to the Parliament building because the men are frightening the horses of the carriages of rich people. A policeman hits John and John asks, “‘Whatten business have you to do that?’” (Gaskell 125). The policeman replies, “‘it’s our business to keep you from molesting the ladies and gentlemen going to her Majesty’s drawing-room’” (125). John argues that his business is more important than that of the ladies and gentlemen but the policeman only laughs. This is one of many instances in the novel where the poor working men are mocked by those in power.

Policemen in Manchester are as repressive as those in London. Esther is arrested for “disorderly vagrancy” by a policeman who mistakenly concludes she is intoxicated rather than understanding she is weak from hunger and exposure to the elements (Gaskell 154–55). Esther is not granted a trial, but is summarily “committed to prison for a month” (155). On another day, a policeman overhears a “violent discussion” between Jem Wilson and Harry Carson; intervenes to “pinion” Jem; and asks Harry Carson, “‘Shall I take him to the lock-ups for assault, sir?’” (222). Although the officer sees Carson strike Jem first which would make Carson the assailant, he is quick to accuse Jem of assault. The same officer subsequently tells the prosecutor about this scuffle, providing the prosecution with evidence of motive to support the unjust arrest of Jem for Harry Carson’s murder.

The repression by police in London and Manchester is surpassed in the Liverpool courtroom when Will Wilson “forced his way over rails and seats, against turnkeys and policemen. The officers of the court opposed this forcible manner of entrance” (Gaskell 405). Will’s testimony is critical to Jem’s defense and to the ascertainment of truth, but the police block his access to the stand. Patsy Stoneman observes: “In Mary Barton, the agents of the law prevent not crime but unauthorised speech” (75). The police are not interested in justice because they represent only the interests of those who have money and power.

Harry’s father, Mr. Carson, offers a reward of 1000 pounds “‘to have the murderer brought to the gallows’” (Gaskell 259–60). The police, motivated by this financial reward, allow Mr. Carson to control the investigation. Mr. Carson rushes the legal process, demanding that Jem be tried the following week. He hires attorneys to “watch the case” and seeks a “speedy conviction [and] a speedy execution” to “satisfy his craving thirst for blood” (272–73). When the superintendent of police notes that Jem “‘may easily request an adjournment of his trial, on the ground of the shortness of the notice,’” Mr. Carson orders
him to oppose any such request and vows to hire lawyers to prevent delay (263). One lawyer’s clerk recognizes the injustice to Jem: “‘If it had not been so clear a case, . . . I should have said they were injudicious in hurrying on the trial so much. Still more evidence might have been collected’” (349). This rush to judgment places Jem’s defense at a terrible disadvantage because his alibi witness, Will Wilson, is a sailor on board a ship.

The police and prosecutor adopt Mr. Carson’s motivation to seek revenge: “To avenge his child’s death, the old man lived on; with the single purpose in his heart of vengeance on the murderer. True, his vengeance was sanctioned by law, but was it the less revenge?” (Gaskell 263). He meets with the prosecutor seven times on the Saturday before the trial (349). The night before the trial, Mr. Carson “almost regret[s] the haste with which he had urged forward the proceedings” but he must have vengeance to get peace (389). Mr. Carson is like a “wild beast in a cage” that night and is like a “beast of prey” in the courtroom (389, 407). His motive for revenge makes him like an animal and the justice system assumes this beast-like image when Jem “slip[s] through the fangs of justice” as the jury returns a “not guilty” verdict (409).

The police and prosecutor jump to incorrect conclusions and fail to collect all the evidence necessary to correctly determine the identity of the murderer. They miss the piece of wadding paper that was in the field near the gun (murder weapon) and fail to determine whether Jem was in Manchester at the time of the crime. They rush to the conclusion that the murderer was motivated by jealousy over Mary Barton and the murderer must be Jem Wilson. They fail to explore other possible motives and suspects. Like Gines in Caleb Williams, the policemen depicted in Mary Barton are motivated by “the life of adventure they experience; a continual unwinding of Jack Sheppard romances, always interesting to the vulgar and uneducated mind, to which the outward signs and tokens of crime are ever exciting” (Gaskell 272).20 This is a criticism of the police for seeing crime as a challenge to

20 This reference to the Newgate novel Jack Sheppard:A Romance by William Harrison Ainsworth published serially from 1839–40, reflects concern among upper classes in the early Victorian era that the poor may emulate Sheppard’s behavior (Stearns).
match wits with a crafty criminal rather than as the tragic result of human interactions. The policemen do not know Jem, so they form erroneous opinions about his character. When a policeman in disguise tricks Mrs. Wilson to identify the murder weapon as belonging to Jem, the policeman is disappointed that he obtained the information so easily: “There would be no fun in fox-hunting, if Renard yielded himself up without any effort to escape” (274). While Mr. Carson is compared to a wild animal who regards the suspect as his prey, the policeman is a hunter who tracks and catches the suspect as one would a fox. The officer feels a pang of sympathy for the woman whom he has tricked into implicating her son but this does not stop him from using the information.

Just as the police only consider evidence that will convict Jem for the crime, the prosecutor interprets the circumstantial evidence to conclude that Jem is guilty. To secure a conviction, the prosecutor mistreats Jem and the trial witnesses. The prosecutor argues in his opening statement that Jem looks like a murderer: “I have seen a good number of murderers in my day, but I have seldom seen one with such marks of Cain on his countenance as the man at the bar” (Gaskell 393). He draws the jury’s attention to Jem’s “low, resolute brow, his downcast eye, [and] his white compressed lips” (393). The reader of the novel knows that Jem did not commit murder; in fact, he acted heroically earlier in the novel to save the lives of men trapped in a building on fire. The prosecutor’s argument that Jem looks like a murderer is akin to the prosecutor testifying as an expert on what murderers look like. The prosecutor mistreats Jem by arguing his looks are evidence of his guilt.

The prosecutor also mistreats witnesses. When Will Wilson testifies that Jem was with him outside of Manchester at the time of the murder, the prosecutor assumes Will is lying. He asks Will how much he was paid for his testimony. Will responds, “Will you tell the judge and jury how much money you’ve been paid for your impudence towards one who has told God’s blessed truth, and who would scorn to tell a lie, or blackguard any one, for the

21 Gaskell exposes the fallibility of theories of physiognomy—“the pseudo-science based on the belief that a person’s character could be judged by their physical appearance— which] was popular throughout the nineteenth century” (Cox 107).
biggest fee as ever lawyer got for doing dirty work?" (Gaskell 408). Will exposes that the prosecutor has a financial interest in obtaining a conviction, not in seeking justice. Attorneys like the prosecutor are performing for a jury and are paid to tell a false story.

The prosecutor’s treatment of Will is mild compared to the way he mistreats the women he calls to testify. Mrs. Wilson and Mary Barton are terrified when they receive summonses to testify. The naive Mrs. Wilson cannot believe that the policeman questioned her in disguise, saying: “‘Nay; they’d never go for to do that, and trick me into telling on my own son. It would be like seething a kid in its mother’s milk; and that th’ Bible forbids’” (Gaskell 278). The legal system of England allows the police to trick Mrs. Wilson, and the prosecutor to compel her to testify and incriminate her son, which Mrs. Wilson (and arguably the narrator) regards as a violation of the Bible.

The prosecutor also calls Mary Barton to testify in order to establish that Mary loved Harry and Jem was jealous, proving his motive to murder Harry. Mary is thrust into the uncomfortable position of being a public spectacle. Gaskell reflects the opinion prevalent in her time that women should not attend trials and she distances her narrator from the spectacle, declaring: “I was not there myself” (398). Alison Moulds observes: “The content of legal trials was considered particularly unsuitable for female consumption” (73). The narrator’s source tells her that Mary looked like “Guido’s picture of ‘Beatrice Cenci’” (Gaskell 398). By referring to Beatrice Cenci, Gaskell invokes the image of a young woman executed for killing her father to prevent him from continuing to commit incest against her. Besides creating a compelling visual image of Mary Barton’s emotional torment caused by being called to testify, this comparison “demonstrates the way in which the audience [would] have drawn their own conclusions about Mary before she has even spoken” (Moulds 74). Moulds observes: “it would be difficult to overestimate the way in which the nineteenth-century press objectified women involved in real-life criminal proceedings” (74). The implication is that any woman who would testify in a courtroom is of questionable morals because she is connected with crime. Mary’s appearance in trial “marks Mary’s debut as a public woman in an androcentric arena” (68). Gaskell’s portrayal of how societal notions about the impropriety of women speaking publicly predisposes jurors not to believe female witnesses in the Victorian era mirrors Godwin’s portrayal in Caleb Williams of how servants who testified against their masters were also regarded as false during the Georgian era.
During the period *Mary Barton* was written, women had just begun to speak out against the way they were marginalized by the justice system (72–73). The drama surrounding Mary Barton’s appearance in court exemplifies and criticizes the objectification of female witnesses in Victorian courts.

The prosecutor asks Mary to testify whether she favored Harry or Jem. The narrator objects to this question: “And who was he, the questioner, that he should dare so lightly to ask her of her heart’s secrets? That he should dare to ask her to tell, before that multitude assembled there, what woman usually whispers with blushes and tears, and many hesitations, to one ear alone?” (Gaskell 399). Mary answers that she loves Jem, but the jury, rather than seeing this as exculpatory for Jem, “only strengthened the supposition of his guilt” (401). Although Mary’s testimony removes Jem’s alleged motive to murder Harry Carson, her mere appearance in the courtroom is sufficient to impugn Jem. The jury sees her beauty and can believe that a man would kill over jealousy of her. The truth is not as interesting as the false narrative spun by the prosecutor and repeated in the press. Mary is tainted by the process of testifying. Laura Struve observes: “In the nineteenth-century, a woman’s public appearance raises questions about her sexuality” (8). The prosecutor does not care about the repercussions for Mary’s reputation when he calls her as a witness.

Mary becomes a public figure by testifying because the newspapers in Manchester and London cover the trial (Gaskell 440). Mary “‘can’t hide’” her “‘fine doings at Liverpool’” because “‘it’s all in print’” (440). She is cast as a “heroine” “looking out for admirers during a trial for murder” by the newspaper accounts, a description which is “incongruous with the scene she had really undergone” (440–41). In fact, her employer, a dress-maker, is willing to re-hire her as a “way of tempting people to come to her shop” (441). The press spins a false account of the trial and of Mary.

Gaskell presents three narratives about the trial and the murderer, reminiscent of Godwin’s three versions of Caleb’s adventures in *Caleb Williams*. The false newspaper report (like Gines’s “wanted” poster) and the false accusation of Jem by the prosecutor (like Falkland’s accusation of Caleb) are refuted by the true account told by the narrator. Like Godwin, Gaskell vouches for the veracity of the narrator’s version of the facts by having the real murderer, John Barton, confess to the crime. John thus corroborates the narrator’s and Mary’s version of the story of who murdered Harry Carson. Gaskell, like Godwin, elevates
the novelist to the position of truth-teller at odds with both the legal system and popular media. Hilary M. Schor sees *Mary Barton* as one of several Victorian novels that “opposes itself to its specular double, the trial-by-jury, as it both stages and displaces the trial as a form of truth-telling” (180). The fictional novel tells the truth while institutions that should tell the truth spin fictional stories.

Gaskell’s criticism of the legal system in the novel is multi-faceted and addresses how the legal system fails to meet its promises to citizens that trials will be fair. When prosecutors rush to judgment, they undermine the premise of English law that the courts will presume an accused is innocent until proven guilty. In *Mary Barton*, Jem must prove himself innocent. At this time in England the reality was that a defendant was expected to speak up in his defense, and failure to do so was held against him: “The nascent presumption of innocence thus remained divorced from the labouring class’s daily experience of the criminal law in action” (Schramm 187). Unfortunately for Jem Wilson, he cannot defend himself by testifying without implicating John Barton for the murder. Mary realizes that Jem “had it in his power to exculpate himself at another’s expense. And his tacit refusal so to do, had assured her . . . that the murderer was safe from any impeachment of his” (Gaskell 315). This element of the narrative is similar to Caleb’s reluctance to implicate Falkland to defend himself in *Caleb Williams*: “the ability to defend oneself may be hampered by the ethical urge to avoid the accusation of another, and authors clearly found this complication a fertile field for their own narrative advocacy” (Schramm 105). Jem’s attorney cannot properly defend him because Jem will provide no assistance. The only evidence the attorney plans to offer is character evidence which he recognizes is not very convincing: “‘juries go very little by such general and vague testimony as that to character’” (Gaskell 372). Through the extraordinary efforts of Mary Barton, Will Wilson is produced at trial to offer an alibi. The attorney defending Jem is heartened when he learns he has an alibi witness “not so much out of earnestness to save the prisoner, of whose innocence he was still doubtful, as because he saw the opportunities for the display of forensic eloquence which were presented by the facts” (405–06). This barrister, like the prosecutor, is more concerned with the craft of being a lawyer than he is with his client’s dire circumstances.

The premise that a jury will provide a fair trial is also criticized in *Mary Barton*. The jury finds Jem “not guilty,” because “the punishment that awaited him, if guilty, was so
terrible, and so unnatural a sentence for man to pronounce on man, that the knowledge of it had weighed down the scale on the side of innocence” (Gaskell 409). This implies that the jurors would convict Jem if there were a punishment for the crime other than death, because they are willing to disregard the alibi testimony provided by Will and Mary’s exculpatory testimony.

Gaskell, like Godwin, presents facts in Mary Barton like she is presenting evidence in court. Grossman observes that the novel “defin[es] for itself an evidentiary role in the determination of justice in class relations” (115). He analyzes how Gaskell, like a lawyer presenting evidence to a court, follows two documents, the valentine that becomes wadding paper and the caricature that becomes a source for choosing who will commit murder (109–17). Grossman concludes: “This novel is meaningfully like and unlike the law courts it depicts, as Gaskell specifically constitutes our reading in terms of evidence and testimony” (125). The police and the court do not have these two key piece of evidence: the wadding paper necessary to establish the identity of the murderer, and the caricature providing evidence of motive for the murder.

However, even if the police had found the wadding paper, it is likely they would have interpreted the appearance of Jem’s handwriting on it as evidence proving he killed Harry Carson. If the police had considered the caricature and arrested and tried the true murderer (John Barton), the trial would have resulted in the execution of John Barton which is not as just a resolution as the novelist obtains: John’s confession, and Mr. Carson’s forgiveness. The courts offer only punishment for crime, regardless of whether the person who committed the crime expresses remorse and is not a danger to society. The courtroom procedures are designed to ascertain the facts relating to the crime so they exclude evidence about extraneous matters. In contrast, the novel is able to provide a full and balanced description of John Barton’s life to demonstrate his character and the possibility of his redemption or rehabilitation. An example of John Barton’s character occurs after he kills Harry Carson and as he starts his journey to Glasgow, when he stops to carry a lost child home to his mother (Gaskell 246). It is the suffering of others that makes him angry enough to kill. Job Legh describes John as “a loving man before he grew mad with seeing such as he was slighted” (472). These details about John Barton’s life establish that John is a good man who acted in an uncharacteristic way when he committed murder and it was due to extraordinary
circumstances. Shirley Foster observes, “the novel’s wider message [is] that until men and women, masters and workers, understand and sympathize with each other there will never be resolution of conflict, personal or societal” (xix). The courts unfairly judge a man based on one event in his life without regard to his true character but the novel gives the reader a more complete and accurate depiction of John Barton.

Given the failings of the criminal justice system and Parliament, Gaskell urges her middle class readers to take action on behalf of the working poor. She expresses the “middle class crisis of self-definition” and its attempt “to reimagine the roles that it should play in the maintenance of social order” (Bodenheimer 5). Gaskell writes in a letter in 1848: “‘I do think that we must all acknowledge that there are duties connected with the manufacturing system not fully understood as yet’” (Chapple 39). She presents evidence and proves her case that, given the failure of the legal justice system, the masters have a duty to improve the social conditions of their workers. She argues this duty arises from the fact that they have the most to lose if the workers become violent and they have a religious obligation to do what they can to improve the lot of their fellow man. She portrays how, although the owners of the mills and their workers share an interest in securing contracts for work, the owners stubbornly refuse to share with workers their reasons for offering lower wages than usual in order to keep their costs down for a contract. Gaskell notes “in the long run the interests of the workmen would have been thereby benefited. Distrust each other as they may, the employers and the employed must rise or fall together” (212). Rather than treat workers as intelligent men, the owners dictate the wages they will pay and the disgruntled workers strike (212–13). It is clear from this account that the owners of the mills could have avoided many of the problems that ensued if they had merely shared information with their workers.

When the owners finally agree to meet with representatives of the workers, the workers are so ragged and smelly that: “Some of the masters were rather affronted at such a ragged detachment coming between the wind and their nobility” (Gaskell 226). The owners do not ask themselves why these men are in such a terrible condition. Instead they take offense that the men would come to speak to them looking and smelling as they do. Harry Carson, representing the “voice of the violent party among the masters,” denies the demands of the workers while threatening to punish workers who persist in their demands (227). To add insult to injury, Harry Carson draws an unflattering caricature of the workers’ delegation.
John Barton remarks of this drawing, “It seems to make me sad that there is any as can make . . . such laughable pictures on men, whose very hearts within ‘em are so raw and sore as ours were and are’” (232). Harry Carson is cruel and unjust. If the masters continue to ignore and mock the suffering of their workers, they may become victims of violence like Harry Carson in the novel.

Appealing to the masters’ religious obligation to help the poor, Gaskell contrasts the fetid living conditions of the Davenports with Mr. Carson’s house which is “furnished with disregard to expense” (82). When Wilson goes to Mr. Carson’s home for an infirmary order for Mr. Davenport, he enters through the kitchen where servants are busy preparing steaks, bread and eggs for breakfast (83). Wilson has not eaten since dinner the day before, but no one offers him anything to eat: “If the servants had known this, they would have willingly given him meat and bread in abundance; but they were like the rest of us, and not feeling hunger themselves, forgot it was possible another might” (83). This is the crux of the problem: those who have more food than they need are oblivious to the starvation of those who do not have enough. Mr. Carson is “in a luxurious library, at the well-spread breakfast-table” when Mr. Wilson is “ushered in” (84–86). Mr. Wilson tells him he needs an Infirmary order for Mr. Davenport and Mr. Carson says, “‘I don’t pretend to know the names of the men I employ’” (86). Mr. Carson fails to treat workers as fellow human beings. No wonder the working poor, like John Barton, blame the rich man for failing to “share his plenty with me, as he ought to do, if his religion wasn’t a humbug” (12). In contrast, John Barton shares what little he has with others on multiple occasions, thus incorporating in his life the religious obligation to be his brother’s keeper.

Mary Barton points to the unequal distribution of property as the source of injustice which is reflected in the attitude of the rich mill owner Mr. Carson and in the legal system. In this regard, it parallels Caleb Williams, where the rich landowners Tyrrel and Falkland abuse those with less wealth and the legal system is their tool for tyranny. However, in Mary Barton, the landowner, Mr. Carson, develops an awareness of his role in pushing a decent man like John Barton to commit murder and he reforms his behavior, whereas in Caleb Williams, the gentlemen landowners do not repent. Falkland acknowledges his past behavior but there is no indication that he would, if he survived his illness, do anything differently in the future. Carson’s realization and reformation make Mary Barton a very different novel.
from *Caleb Williams* because it assumes that society’s problems can be solved, whereas *Caleb Williams* offers no hope of improvement. Godwin may have written the prototype for the legal problem novel, but Gaskell turned the legal problem novel into a call for specific action.

To achieve justice, the mill owners must change their behaviors and work to improve the lives of workers. Mr. Carson must abandon his thirst for revenge, understand John Barton’s motive for murder and forgive him. When Mr. Carson first learns that John Barton is the murderer, he seeks vengeance. Responding to John Barton’s confession, Mr. Carson replies, “I will not spare you the least pang the law can inflict” (Gaskell 447). John Barton replies that he expects no mercy and welcomes death to relieve him from the misery of knowing he committed a sin (447). The two men express their anguish at losing their sons and the two “were then brothers in the deep suffering of the heart” (449). John Barton exclaims “I did not know what I was doing” and asks Mr. Carson: “forgive me the anguish I now see I have caused you” (451). In a letter in 1849, Gaskell expresses her intent to show how “violating the eternal laws of God, would bring with it its own punishment of avenging conscience far more difficult to bear than any worldly privation” (Chapple 35). John Barton punishes himself but needs Mr. Carson’s forgiveness. At first, Mr. Carson is unable to forgive Barton and utters the blasphemy, “Let my trespasses be unforgiven, so that I may have vengeance for my son’s murder” (Gaskell 451).

On his way home after making this remark, Mr. Carson witnesses a little girl forgive a boy who knocked her down in the street. The little girl pleads with her nurse not to call the police because “He did not know what he was doing” (Gaskell 453). Mr. Carson realizes that he has heard the phrase “I did not know what I was doing” somewhere before (453). When he arrives home, he takes down his Bible and reads the narrative ending with “They know not what they do” (455). Gaskell reminds her readers of the obligations of their faith: “One of her aims in *Mary Barton* . . . was to eradicate evils by arousing the conscience of all those who professed to be Christians” (Fryckstedt 86). Mr. Carson also reflects on the events of the evening and remembers “the grinding squalid misery he had remarked in every part of John Barton’s house, and which contrasted strangely with the pompous sumptuousness of the room in which he now sate” (Gaskell 454). When Mr. Carson returns to his faith and realizes his obligation to alleviate John Barton’s suffering, he moves from hating John Barton
to pitying “the poor, wasted skeleton of a man, the smitten creature, who had told him of his sin, and implored his pardon that night” (454).

Mr. Carson returns to the Bartons’ home just as John Barton is dying. Mr. Carson “raised up the powerless frame; and the departing soul looked out of the eyes with gratitude” (Gaskell 457). Mr. Carson forgives John Barton and asks for forgiveness himself: “‘God be merciful to us sinners.—Forgive us our trespasses as we forgive them that trespass against us’” (457). By using the words “us” and “we,” Mr. Carson takes responsibility for the role he has played in the suffering of John Barton and acknowledges human imperfection. His statement also reminds readers that there is a Biblical law requiring us to forgive trespassing which is very different from the law of trespass in British law that demands we punish the trespasser. The novel educates mill owners on the “sufferings engendered by unemployment . . . as a precondition for their redemption” (Zlotnick 68). The novel achieves a justice that can only happen when masters and workers forgive each other and work together.

The justice in the novel is one based on a religious model of confession and atonement by the wrongdoer, and forgiveness by the victim and judge. This model focuses on redeeming the wrongdoer rather than punishing him. Rather than presenting two opposing sides with lawyers advocating different interpretations of the evidence of the criminal act, Gaskell’s novelistic model involves only one advocate—the novelist—who relates the facts honestly. The writer of a fictional novel thus becomes the teller of truth as compared to the lawyers who tell fictional stories. The novelist also plays the role of judge and jury, determining the true facts and obtaining the confession and rehabilitation of the wrongdoer. Forgiveness and redemption replace punishment in the novelist’s trial of John Barton. The novel reflects Gaskell’s background. She was the daughter of and wife of Unitarian ministers. She assumes the role which Carlyle envisioned in his essay “Heroes and Hero Worship” as the most noble for writers: “He that can write a true Book, to persuade England, is not he the Bishop and Archbishop, the Primate of England and of All England? I many a time say, the writers of Newspapers, Pamphlets, Poems, Books, these are the real working effective Church of a modern country” (Carlyle 91).

Mary Barton proposes a radical shift in the law that is no less revolutionary than William the Conqueror’s separation of laws of state and of church. In fact, Mary Barton is “one of the most militant pieces of fiction to come out of the nineteenth century” (Daly
The novel proposes a completely new form of human trial and judgment based on religious principles of confession and redemption. It presupposes that both the church and the state have hitherto produced unjust legal systems because they sought punishment.

Gaskell’s idea of justice requires citizens to take action to prevent unnecessary suffering and criminality in the future. Mill owners must pay attention to the needs of the workers and do what they can to improve the workers’ lives. Mr. Carson’s realization of the harm his prior indifference has caused John Barton leads him to action: “to have educated workers, capable of judging, not mere machines of ignorant men; and to have them bound to their employers by the ties of respect and affection, not by mere money bargains alone; in short, to acknowledge the Spirit of Christ as the regulating law between both parties” (Gaskell 477). Josephine M. Guy observes “The novel’s main plot seems to imply that conflicts between masters and men can be resolved on an individual level through Christian understanding and proper education” (149). To this must be added that conflicts can only be resolved by masters taking action to change institutions so they reflect religious principles such as those taken by Mr. Carson to improve his community and to help his fellow man. The novel establishes that the law is fallible and therefore each of us must take moral responsibility for our actions and each other (Stoneman 58). It changes the role of the novel from one criticizing the legal system, to one questioning the very foundations of the system, offering rehabilitative and preventative alternatives to the legal system’s incompetent and biased process and focus on vengeance. This is indeed a lofty goal for a novelist and lends gravitas to the words of the epigraph of the novel.
CONCLUSION

This thesis identifies a sub-group of the “social problem novel” and names it the “legal problem novel.” The legal problem novel was created and developed in England during a period of political revolutions in neighboring Continental Europe from 1789 to 1848. The first legal problem novel, William Godwin’s Caleb Williams published in 1794, employs two narrative tactics which became the hallmark of the genre: a forensic presentation of the facts of legal cases, and the portrayal of legal systems that are alternatives to the government’s system. Godwin also presents the reader with a fact relating to the legal case in the novel which is unknown to the court.

In 1820, Walter Scott published the legal problem novel Ivanhoe, a historical fiction set in Medieval England when Richard I united the Saxon and Norman people and founded the common law. Scott uses Godwin’s narrative techniques: presenting a witch trial and portraying five competing legal systems operating in England at the same time. Scott treats the outlaw Robin Hood as a national hero and portrays medieval society as xenophobic. Ivanhoe establishes that, just as English society changed a great deal between the Middle Ages and the nineteenth century, the common law could, and should, be reformed to meet the needs of the modern British society.

In 1848, Elizabeth Gaskell published the legal problem novel Mary Barton, using Godwin’s forensic narrative techniques of presenting the facts of a criminal murder trial against an innocent man; informing the reader of an important exculpatory fact that is not presented to the court; and offering the possibility of an alternative legal system based on religious principles of rehabilitation and forgiveness. Gaskell advocates for capitalist masters to take responsibility for the welfare of their workers and to seek legislative reforms.

Caleb Williams, Ivanhoe, and Mary Barton sought revolutionary changes in the law. Although they use similar narrative tactics, the novelists approach the subject of an unjust outdated legal system in different ways. Godwin portrays the legal system as a rigged system...
benefitting landed gentry and incapable of being reformed. This leaves the reader with one option: to seek a change of the entire governing system. Scott, a member of the legal community, demonstrates how the law is a human construct that must change with societal changes. Gaskell portrays the legal system as a rigged system favoring the upper class and oppressing the poor but, unlike Godwin, she advocates for legal reforms to bring it in line with widely held religious beliefs. The three novels elevate the novel form beyond the mere story telling function to intervene in society and advocate for legal reform.
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