

**Legal Fictions, Legal Limits:  
The Noble Patriarch and the Power of Law in Victorian Literature(1)**

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**“Unprotected Females”**

<1> “Scenes from the Life of an Unprotected Female” appeared in *Punch* magazine between 1849 and 1851. In each short scene, hapless single woman Martha Struggles attempts to perform some basic task, like getting on a bus or going to the bank, and fails miserably—and often humorously. The scenes usually end with Miss Struggles collapsing in a “rapture of relief” into the willing arms of the competent Mr. Jones, who arrives just in time to extricate her from a hopeless situation (“Scenes from the Life: Scene 11” 22). Without a man to protect her from the business of life, the series suggests, a woman is entirely unequal to conducting the simplest business outside the home. While most scenes end with Miss Struggles at least temporarily chaperoned by a male “protector,” at the end of the series she acquires a permanent, legal protector by finally becoming Mrs. Jones.

<2> Intriguingly, the marriage doesn’t actually conclude the series—or Martha’s struggles. A few “Scenes from the Life of an Ex-Unprotected Female” show that even after marriage, a woman requires vigorous protection. Unfortunately, Mr. Jones often travels on business, leaving Mrs. Jones “to struggle with . . . the horrors of Papal aggression and the approaching Exhibition of all Nations” by herself (“Scenes from the Life of an (Ex) Unprotected Female” 136). Miss Struggle’s misadventures happen when she leaves home to transact some business: travelling, shopping, or cashing a check, for example. Tellingly, however, after Miss Struggles is married, her challenges as Mrs. Jones occur when her husband is not around to protect the home from the public sphere. Her anxieties focus on the census, robbers, or the Great Exhibition. The implication? Before marriage, a woman requires a man to transact her public business, and after marriage she needs him to keep the public sphere out of the home. Unlike Miss Struggles, Mrs. Jones does not struggle with business in the public sphere because, as a married woman, she has no business in the public sphere. More to the point, challenges faced by Miss Struggles, such as withdrawing her dividends or executing her aunt’s will, never confront Mrs. Jones because, under the legal doctrine of coverture, her legal identity is subsumed into her husband’s.

<3> “Scenes from the Life of an Unprotected Female” raises important questions about the condition of Victorian women with “no male relations . . . to advise” them (“Scenes from the Life: She Has an Interview” 142). Or, perhaps more compellingly, “Scenes” raises questions

about what happens to a woman who *does* have a legal protector if he is absent, immoral, or weak. Furthermore, after those related to travelling, Martha's most common problems arise from contact with the law or other kinds of public authority, like the census or the bank. Of the two dozen "Scenes," about a quarter feature Martha directly encountering the law, while several others show her confronting other public institutions. Martha's many struggles with the law speak, publicly and visibly, to the centrality of the issue of Victorian women's tenuous position between the authorities of the patriarch and the state.

<4> Much of Victorian literature turns on just this tension. When the continuity between law and patriarch fails, a power vacuum opens, a dangerous space where neither patriarch nor state is exercising authority. How many female characters suffer three volumes' worth of tribulation precisely because they are "unprotected females"? Or, because their "protectors" are absent or impotent, and the law neither protects them nor empowers them to protect themselves? Recall, for instance, the cases of Dorothea Brooke in *Middlemarch*, Louisa Gradgrind in *Hard Times*, Laura Fairlie in *The Woman in White*, or Isabel Carlyle in *Easy Lynne*. Each of these women, and many of their literary sisters, suffers greatly because her father, guardian, or husband fails to protect and provide for her effectively.

<5> The Victorian legal system rested on a fundamental assumption of continuity between the patriarchy and a paternal government; Simon Petch has identified "the very nub of the [Victorian] legal system" in "the point at which paternalism becomes continuous with patriarchy" (167). Victorian law assumed that the state and individual men would collaborate in the business of government, one picking up where the other left off. Even as the state increasingly, albeit slowly and unevenly, became invasively paternalistic in its government of the lower classes and disenfranchised groups such as prostitutes or criminals, for most of the period it still shied away from governing matters of home or family. Rather, the state ceded the governance of domestic spaces to individual patriarchs. Because of the state's reluctance to govern the home, its continued endorsement of the patriarchy, and its failure to take action to legally empower women until the Matrimonial Causes Act of 1857 and the Married Women's Property Acts of 1870 and 1882, a married woman in Victorian Britain lived very much under her husband's power. Because the law invests the patriarch with such extensive power, to paraphrase Mary Lyndon Shanley, where happy families did exist in Victorian Britain, they did so not because of the law but in spite of it (8).

<6> The British law in this area rested, I argue, on several "legal fictions," or common-law constructs that permit an imperfect law to function without legislative reform. These fictions include coverture itself and the notion of the woman as the law's favorite. To these I would add one that I call the "noble patriarch." I argue that the Victorian law posits a "noble patriarch" who always honorably and vigorously protects those under his authority. Furthermore, this legal fiction reinforces the law by concealing that law's need for reform. However, another kind of legal fiction, Victorian literature, speaks back to the law, exposing the law's reliance on a fiction by dramatically illustrating the disastrous results of patriarchs' failures to protect. Victorian novels affirm ideal patriarchal behavior by endorsing good patriarchs who live up to the law's expectations, but even in doing so they demonstrate the rarity of such patriarchs and thereby expose the hollow fiction underlying the law. Therefore, these novels critique a legal system that

invests fallible men with full responsibility for the welfare of the women under their authority. By foregrounding patriarchal power and the limits of the law's willingness or ability to check that power, the Victorian novels under consideration here, along with many others, subversively question the potency of the law itself even as they endorse a model of the ideal patriarch. By exposing the unstable fiction underlying the Victorian law, these novels reveal the tension between the supposedly collusive yet constantly conflicting authorities of the state and the individual patriarch.

## Legal Fictions

<7> A legal fiction is a common-law rule that "assumes as true . . . something which is false" (Jowitt 787). Procedurally, a legal fiction was simply a false allegation of fact, which "would, if true, have led to a desired result under the existing rules of law" (Harmon 2). In its basic procedural sense, a legal fiction is a white lie a court tells in order to achieve an end that the existing the law would not otherwise permit. Such fictions then become enshrined as precedents in the common law. Over time, the term "legal fiction" came to denote any unverifiable assumption made for purposes of justice (Petch 157). In fact, Jeremy Bentham even considered the theoretical social contract underlying the modern state to be a legal fiction (Harmon 3). Thus, from a very specific procedural application, the term gained a much broader use in legal theory. The grandfather of British law, Sir William Blackstone, considered legal fictions "highly beneficial and useful" when used to "prevent a mischief, or remedy an inconvenience, that might result from the general rule of law" (qtd. in Harmon 6-7). Thus Blackstone reveals what Louise Harmon calls the "conservative function of the legal fiction" (7); legal fictions permit an imperfect law to carry on unreformed.

<8> Under the legal doctrine of coverture, a married woman is "covered" by her husband's legal identity. In law, "the husband and wife are one person" because the "being or legal existence of the woman" is "incorporated" into that of her husband (Blackstone 442). The law indulges in the legal fiction that the wife "performs every thing" under the "influence and protection" of her husband (442). The law does not even conceive of independent agency for the married woman. Instead, the law holds the husband "answerable for her misbehavior" and therefore "the law thought it reasonable to intrust him with power of restraining her" (444). Rather than troubling itself to directly govern a woman's conduct, the law finds it expedient to cede that authority to the husband and govern him instead. Similarly, the law places on the father the "duty" of "protecting his children from the snares of artful and designing persons; and . . . settling them properly in life" (452). It therefore grants him an "empire" over his children "to enable [him] more effectually to perform his duty" (452-3). The law delegated to the patriarch, in his twin characters of husband and father, full responsibility for protecting his wife and children; it therefore granted him imperial authority over them.

<9> Blackstone famously concludes that the law so thoroughly sees to the "protection and benefit" of women because "[s]o great a favourite is the female sex of the laws of England" (445). He makes a similar claim about children (450). Petch rightly considers this notion of favoritism a legal fiction (167). The conservative function of this particular legal fiction is apparent in that, by positing that the law privileges women to the point of favoritism, it

obscures any need to improve their legal standing. This well-known fiction of the woman as the law's favorite, however, necessitated the corresponding legal fiction that I call the noble patriarch. Given that the law grants such extensive authority to the patriarch along with full responsibility for the welfare of those under his protection, I propose that the law posits a fictitiously perfect patriarch, who always exercises his authority vigorously, honorably, and wisely. While the law clearly sought to perpetuate women's disenfranchisement by emphasizing their need for protection and fictitiously establishing them as privileged under the law, the patriarch who supposedly does the protecting is *itself* a legal fiction: the necessary corollary of the protected, favored woman is the noble patriarchal protector. The fiction of the noble patriarch sets forth an impossible standard, leaving even well-intentioned men doomed to fail in the duties of protection that the law delegates to them. Victorian literature, thus, abounds with examples of failed patriarchs and unprotected women, and both groups suffer when their actual experiences prove that the law's constructs of the noble patriarch and the favored woman are fictitious.

### **Law and Victorian Literature after Foucault**

<10> In making an argument about the novel's role in extending or subverting the power of the law in the Victorian period, it is impossible to ignore the work of Michel Foucault. Scholarship about the law and the state in Victorian literature owes much to Foucault, especially to his *Discipline and Punish* (1975). My present argument will benefit from engaging with earlier work in this field, especially with regard to understanding the novel's apparently simultaneous tendencies to critique and endorse the legal fiction of the noble patriarch. Early applications of Foucault's genealogy of modern power to Victorian literature, notably D.A. Miller's *The Novel and the Police* (1988), conceive of the novel as "systematically participat[ing] in a general economy of policing power" (Miller 2). For Miller, the Victorian novel is a mechanism of social discipline. While Miller remains important, more recent work from scholars such as Lisa Rodensky and Lauren Goodlad has striven for a more nuanced application of Foucault. This work problematizes the interaction between law and literature, outstripping the earlier understanding of the novel as directly complicit in discipline. The critical conversation in this field coheres around the limits of the law and the extent to which Victorian literature exposes and/or extends those limits.

<11> For Miller, modern disciplinary power figures prominently *in* novels, but it also functions *through* them. He acknowledges that fiction is not the obvious place to look for disciplinary mechanisms, but points out in rebuttal that "no openly fictional form has ever sought to 'make a difference' in the world more than the Victorian novel, whose cultural hegemony and diffusion well qualified it" to do so (x). The novel functions to form "a subject habituated to . . . a social order [with] totalizing power" (xiii). The novel's disciplinary function lies, therefore, in that it forms its readers as subjects of discipline. By representing the inescapable efficacy of both legal and "extralegal" systems of "organization and control" (3), the novel acts as one of the many forms of discourse through which modern subjects are constituted and controlled. The novel, in Miller's account, extends discipline into "area[s] that for the most part the law does not cover or supervise" (3). Thus, the novel depicts the enforcement of social discipline in areas beyond the normal domain of the law—the domestic sphere, most prominently.

<12> Rodensky's *The Crime in Mind* (2003) exemplifies recent scholarship's reaction against Miller and his early Foucauldianism. Her work focuses on the changing concept of criminal responsibility in the Victorian period, charting the extent to which criminal responsibility came to encompass internal intent in addition to overt criminal acts. She critiques Miller for conflating the novel with "other institutional forms," such as the police (11). For her part, Rodensky declines to categorize the novel as either "a liberalizing force" or "a disciplinary technology" (11). She instead "considers the way the narrator's special access [to characters' inner thoughts] both takes the novel outside of the law's epistemological boundaries and at the same time questions the consequences of its own transgression" (11). For Rodensky, the novel's powers surpass those of the law because novels can provide narrators and readers with direct access to characters' thoughts, while the law must rely on external evidence. However, she argues, novels and their authors exercise this power sparingly, displaying caution about how invasive disciplinary power, whether the law's or the novel's, should be. She thus grants the novel a middle position between discipline and liberalization: while the novel *can* extend disciplinary power beyond the law's limits, it often self-consciously chooses not to exercise that power.

<13> If Rodensky critiques and complicates the Foucault-Miller disciplinary paradigm, Goodlad rejects it outright. For Goodlad, Foucault's "genealogical method, with its special reliance on panoptical institutions" simply doesn't apply to British Victorian literature and society (2). While *Discipline and Punish* may have valid things to say about the more institutionalized France, she argues, it provides a "distorting lens through which to peer at the modernization of Britain's idiosyncratic, self-consciously liberal, decentralized, and 'self-governing' society" (8). Goodlad instead turns to Foucault's later work on governmentality to re-evaluate the fitful expansion of state authority and its tension with the powerful ideology of liberal individualism in Victorian Britain (14).

<14> My own argument falls somewhere between Miller's and Goodlad's. While Miller's approach flattens the novel into little more than a mechanism of discipline, and Goodlad is right to expose *Discipline and Punish* as less applicable to Victorian Britain than it is often made out to be, I persist in seeing some disciplinary power in the novel. The novels I consider here *do* prescribe a norm for a proper patriarch and punish characters who fail to conform to this norm. But I take to heart Goodlad's line of inquiry regarding the tension between state and individual authority. This tension is central to my reading of the role of law in Victorian literature, where the limits of the law often provide impetus for individual characters to develop and exercise their own power in order to function where the law cannot. The conflict between individual and law is best demonstrated in the work of Wilkie Collins, a popular author who often pits individuals against larger legal forces, most explicitly in *The Woman in White*.

### **Beyond the Legal Limit: *The Woman in White***

<15> "As the Judge might once have heard it, so the Reader shall hear it now" declares the narrator of Wilkie Collins' *The Woman in White* (1860) as the novel opens. Because "the machinery of the Law" cannot "fathom every case" or "conduct every process of inquiry," this inquiry will occur in a novel rather than a "Court of Justice" (5). The novel presents itself as an

alternative venue for trying a case that cannot be pursued through the legal system. The novel, therefore, possesses the power to venture beyond the law's limitations. *The Woman in White*, I contend, uses its extra-legal powers to put the patriarchal legal system on trial by demonstrating the potentially disastrous effects of the law's fallacious assumption of patriarchs' nobility.

<16> Through the calamities that befall Laura Fairlie because of her father's mistakes, Collins demonstrates that under Victorian legal conditions even the simple fallibility of generally decent men can have disastrous effects on those under their protection. Laura reveres her recently deceased father, Philip Fairlie, as "the best and fondest of all protectors" (169-170). Laura's language recalls Blackstone's description of the father's duty as protector and invokes the law's ideal patriarch. While the revelation of Philip's past indiscretions complicates Laura's idealization, Collins suggests that Phillip was a decent, if flawed, man who loved his daughter and did his best to take care of her. He, after all, provides for her handsomely in his will (151), and all indications are that he believes he is providing for his daughter's protection after his death by engaging her to his "intimate friend" Sir Percival (467). Despite his decency and care, however, he unwittingly causes his daughter's suffering. Laura enters into the disastrous marriage with Sir Percival because her father had desired the match, speaking "hopefully and happily" of it on his deathbed (140). Laura's conviction that "his hopes and wishes" should govern her decisions even after his death causes her to marry a man she fears (170). Sir Percival had been Philip's close friend, and the dying man meant well by entrusting his daughter to him. Unfortunately, he was disastrously wrong; Percival proves to be an utter scoundrel who stages Laura's death and confines her to a lunatic asylum in order to steal her fortune. And a spot on Philip's seemingly pristine character enables Percival's scheme. The key to his (and Count Fosco's) plot lies in switching Laura's identity for that of her mad double, Anne Catherick. Late in the novel, Anne's uncanny resemblance to Laura is explained by the revelation that she is Philip's illegitimate daughter. As narrator Walter Hartright marvels, "With what unerring and terrible directness the long chain of circumstances led down from the thoughtless wrong committed by the father to the heartless injury inflicted on the child!" (568-9). The novel does not condemn Philip for his failings, rather minimizing his "thoughtless wrong." It does not really even suggest that Philip was a bad father; he's portrayed as a good but fallible man. The law's investment in a superhumanly noble patriarch results in a system in which even a father who does his best to protect his daughter can disastrously fail her. The novel's censure falls less heavily on Philip and his flaws than on the system that grants his flaws such magnitude.

<17> If the vast power of the patriarch allows a generally decent man to cause such problems, clearly a patriarch who outright abuses the law's trust in him even more clearly exposes the flaws in a legal system that grants him such power. Sir Percival Glyde and Count Fosco dramatize just about every evil act that a scoundrel can do with the patriarchal powers permitted him under Victorian law. Percival's abuses of Laura are myriad, including physically hurting her and locking her up (304, 298). However, Percival is actually a less interesting—and less dangerous—study of patriarchal power than Fosco. Percival is cruel, but unsophisticated in his cruelty. Fosco, on the other hand, entirely subjugates his wife and urbanely flaunts his legal right to do so. Before marrying, Eleanor Fosco was independent, outspoken, and immodest, but her husband tames her into a "civil, silent, unobtrusive woman, who is never in the way" (219). He rules her with a "rod of iron" (225), and she serves as his spy and accomplice in his crimes. In his grandiloquent written confession, Fosco addresses the question of his wife's unquestioning

obedience: “I was married in England—and I ask, if a woman’s marriage obligations, in this country, provide for her private opinion of her husband’s principles? No! They charge her unreservedly to love, honour, and obey him. . . . Your sympathy, Wives of England, for Madame Fosco!” (628). Fosco revels in his wife’s “covered” state and the power it gives him. Whether his wife has private opinions is a moot point; legally, his will is hers, too. By invoking the sympathy of the “Wives of England” for a woman obliged to be complicit in her husband’s crimes because the law denies her independent *locus standi*, the novel exposes the law’s failure to provide independent agency to married women. Indeed, in this case the law directly undermines itself by enabling crime.

<18> But, rather than indicting all patriarchs along with the patriarchal legal system that empowers them, the novel instead prescribes and endorses proper patriarchal behavior. Walter Hartright perfectly fulfills the legal fiction of the noble patriarch, and he, after a fashion, redeems the law by taking it upon himself to do what the law cannot. He starts out as an effeminate drawing-master, but transforms himself into a virile, triumphant patriarch ensconced in the landed gentry. Hartright returns from “self-imposed exile” on a dangerous Central American expedition “a changed man,” ready to face challenges resolutely “as a man should” (415). When the law lacks the power to restore his beloved’s identity, he inserts his newfound patriarchal potency into the power vacuum beyond the law’s limits. To the family attorney’s admonitions that the legal system cannot help him, Walter rejoins:

[Laura] has been cast out as a stranger from the house in which she was born—a lie which records her death has been written on her mother’s tomb—and there are two men, alive and unpunished, who are responsible for it . . . those two men shall answer for their crime to ME, though the justice that sits in tribunals is powerless to pursue them. (454)

Hartright presents himself as a one-man corrective to the law’s weakness, brandishing his own virility in the face of an impotent law. He recognizes that to reinstate Laura to her proper identity and position, he must become her legal protector through marriage. He explains, “I have no claim on her, which society sanctions, which the law allows, to strengthen me in . . . protecting *her*” (573). To fight for their cause successfully, he “must fight it for [his] Wife” (573). Laura is a nearly hyperbolic representation of disenfranchised woman; she is disinherited, widowed, and mentally broken. Indeed, society believes her to be dead, underscoring the erasure of her personhood. The novel emphasizes the law’s inability to help her. The law leaves the responsibility for protecting women to their male champions, and Laura has none. Hartright recognizes that only by assuming patriarchal authority through marriage can he protect her where the law cannot; he identifies the law’s weakness and exploits it by consciously fashioning himself into a noble patriarch. His ultimate ascent to the landed gentry as Laura’s husband and the father of the “*Heir of Limmeridge*” signals the novel’s endorsement of his success at becoming the ideal noble patriarch.

<19> *The Woman in White* illustrates both the tension and the collusion between the power of the law and the power of the patriarch. Hartright realizes his patriarchal power in the space beyond the power of the law, but it’s the law itself that legitimizes his patriarchal authority. In a sense, Hartright redeems the law by constituting himself as the noble patriarch in order to save Laura

where the law cannot, but the very fact that he needs to do so exposes the law's shortcomings. Although Hartright is able to uphold the law by fashioning himself into a noble patriarch, the act of doing so reveals the law's unstable reliance on a tenuous fiction.

### **Legal Encounters of an Independent Woman: The Case of Lizzie Eustace**

<20> Like *The Woman in White*, Anthony Trollope's *The Eustace Diamonds* (1871) is a study of the power dynamics between and the state and individual patriarchs. The wealthy widow Lizzie Eustace, legally independent but perpetually unsure of her legal position, is constantly threatened by the authority of law and state and constantly maneuvering to secure a husband to shield her from their power. In this sense, the novel's action occurs in the zone of tension between the powers of the state and individual patriarchs. But Trollope also explores the porous boundary between the two types of authority, problematizing the ways in which they function in collusion as well as tension.

<21> The novel complicates the relationship between the law and the patriarch by presenting differing interpretations of how marriage will affect Lizzie's legal status as possessor of the diamonds. While Lizzie's extended family considers her unmarried state a "period of danger," legally there is "no real reason why she should not be free as air" (51-2). She's legally a free and independent woman—not to mention a wealthy one. The Eustace attorney, Mr. Camperdown, wants to proceed against Lizzie legally to reclaim the Eustace family diamonds. Her brother-in-law, however, perceives straightaway that "their best way out of it all would be to get the widow married to some respectable husband" because "any "decently decent" fellow would be easier to deal with than she herself" (79). John Eustace proves wiser and more prescient than his legal advisor; the law, both civil and criminal, ultimately proves powerless to reclaim the jewels. Eustace clearly—and perhaps correctly—assumes that a proper husband would prove better able to control Lizzie than the law.

<22> Ironically, Lizzie arrives at a similar conclusion about a husband's power relative to the law's. While she never grasps the difference between Camperdown's civil action to recover the diamonds and the state's authority over her for criminal acts, she believes that a husband could shield her from both types of legal power. Even before she becomes seriously threatened, Lizzie recognizes that she is "not altogether strong in her position" (82). Although technically an independent woman, she intuits that lacking a husband renders her less secure in a patriarchal society. When she comes under scrutiny for the theft of the Eustace diamonds, she desperately wants a husband to protect her from the police. Despite being guilty of perjury and in danger of prosecution under both criminal and civil actions, "she still thought that if she could obtain the support of some strong arm on which to lean, she might escape punishment" (515). Typically, Lizzie's thoughts about exactly what protection a husband will be able to offer her are unclear. Does she think that the law will leave a married woman alone? That a husband will be bound to take responsibility for her crimes? That a husband is stronger than the state? She probably doesn't know herself, but it's clear that she believes a husband can protect her from legal power. This belief starkly contrasts John Eustace's faith that a husband will cooperate with legal justice and achieve the law's ends without legal action. This apparent confusion speaks to the novel's central exploration of the relationship between legal and marital authority.

<23> The division between state and patriarch becomes even more porous when police officers simultaneously exercise personal and official authority to achieve the ends of justice. In a somewhat bizarre episode, the Scotland Yard detective Gager actually engages himself to marry the thief Patience Crabstick in order to secure her as a witness against her accomplices (566-68). It is “essential” to his case that he bring her back to Scotland Yard “as a witness and not as a criminal” (567). Gager could arrest her and prosecute her for her part in the crime, but he needs her testimony to convict the bigger criminals. To secure her testimony, he needs to earn her trust. He gains her trust by offering her the protection of a policeman as a husband. Patience’s desperate state is evidenced by her repeated expressions of anxiety about whether he will keep his word and marry her after she puts herself under the law’s power by confessing (566). Although Trollope leaves their conversation private, it seems that Gager takes advantage of her desperation by offering marriage to secure her confession. These events present a very tangled web of personal and state power. Evidently, the state lacks the power to compel or entice Patience to testify by normal legal means, so Gager uses the most personal means at his disposal — his hand in marriage — to secure her testimony, clearly exercising patriarchal authority to extend the law’s reach.

<24> There is no legal reason why Patience needs to marry Gager. Technically, she doesn’t need his protection against the state; if she were to incriminate herself by testifying against another criminal, she could no longer be prosecuted. But she evidently wants the security of a husband before she’ll risk yielding herself to the state’s power. She seems to view a husband’s protection as more secure than the state’s; in this, she mirrors Lizzie’s faith in a husband’s power to protect her from the law. Both women intuitively recognize the patriarch’s privileged position under the law, reemphasizing the law’s reliance on the noble patriarch. Patience’s relation to Gager is utterly strange: he conducts her “under his wing” to Scotland Yard, where she is “housed” with “every comfort” but “personal liberty” (568). The image of Gager with Patience under his arm invokes both a man gallantly chaperoning his fiancée and a policeman keeping a criminal from escaping. There’s a great deal of slippage here between a man securing a wife and a cop arresting a criminal. In truth, she’s both wife and criminal, doubly taken into custody, simultaneously surrendering “personal liberty” to both husband and state.

<25> The Gager/Patience episode foreshadows a similar slippage between state and personal authority when Lizzie finally directly encounters the law in the person of Major Mackintosh; Lizzie confesses to Mackintosh while conflating his roles as private man and law officer. When the major visits Lizzie, he knows that she’s committed perjury, but wants to use her as a witness against the actual thieves. He fulfills his legal obligation to inform her that she’s “not bound” to reveal anything that will “criminate” her (659). But he then offers her “really friendly advice” that she “had better admit the truth” (659). Lizzie accepts his advice gratefully, wondering if he could “be her rock” (660). She sexualizes him, thinking that he is handsome and “would know what to do with swords and pistols” (661). She confesses to him because she fantasizes that marrying him would be the surest way to escape her troubles. By offering “friendly” — which Lizzie reads as “spousal” — advice, Mackintosh secures her cooperation far more effectively than he ever could have by threatening her with the power of the law. Lizzie confesses to the major because she imagines herself marrying him and gaining his protection — protection against his own investigation. Both Mackintosh and Lizzie blur the line between his legal and patriarchal roles, reinforcing the now-familiar motif of the law extending itself through patriarchal power.

<26> The law fails to punish Lizzie, appearing powerless against someone of her beauty, wealth, and rank. The novel repeatedly asserts that the law's powers are limited when it comes to people of wealth and title. The police themselves admit that "when lords and ladies with titles come to be mixed up with such an affair—folk in whose house a policeman can't have his will...how is a detective to detect anything?" (554). They seem to acknowledge that Lizzie's social position confounds them. The disreputable but incisive Lord George best articulates this point:

"You are the widow of a baronet, and you have an uncle a bishop, and another a dean, and a countess for an aunt. You have a brother-in-law and a first-cousin in Parliament, and your father was an admiral. The other day you were engaged to marry a peer. . . . If you were nobody, you would of course, be indicted for perjury, and go to prison. As it is, if you will tell all your story to one of your swell friends, I think it very likely that you may be pulled through." (617)

Lord George claims, harshly but perceptively, that Lizzie's high social position enables her to evade the law. The novel could thus be understood as asserting that the law wields little power over the elite.

<27> However, we should not accept this as conclusive evidence of legal impotence: perhaps state power in the novel recognizes that it maintains the most authority by exercising its power with discretion. While he possesses the power to try Lizzie for perjury, Mackintosh actually treats Lizzie's "interests" with "consideration" and even "tenderness" (658). He could place her under ignominious arrest, but he does not. Instead, Mackintosh explains that if she serves as a witness, she won't be prosecuted (661). As we later learn when Lizzie refuses to appear in court, her testimony is not actually essential to the case, so Mackintosh is being generous indeed. Instead of arresting her, Mackintosh recommends that she go to Camperdown and "make a clean breast of it" to the Eustace family (661). Lizzie finds the prospect of debasing herself before her great enemy terrible; Mackintosh effectively leaves her punishment to be enforced by extra-legal means. But this does not mean that she escapes "scot-free" as Camperdown laments (693). Her exposure as a perjurer brings severe social punishment: she is turned out of her friend's house, loses three desirable potential husbands, and ultimately marries a mercenary preacher who turns out already to have been married. The narrative leaves her, in the words of the Duke of Omnium, with "not what I call a good time before her" (770). In obliging her to confess to the Eustaces, Mackintosh sends her forth to the punishment of the world. It is not, as it may appear, that the law is powerless to punish Lizzie. The state *could* punish her, but chooses not to, instead leaving the punishment to the public. State power may simply maintain its power by exercising it sparingly, applying the wisdom that "if one governed too much, one did not govern at all" (Foucault 242; cf. Goodlad 14).

<28> *The Eustace Diamonds* functions as an exploration of the "nub" of the Victorian legal system—the continuity between the state and the patriarch. The plot of the novel occurs in the gray area between the authority of the state and the authority of individual patriarchs, dramatizing how the two powers operate in a problematic dynamic of tension and collusion. While the novel often draws attention to the limits of the law, most often these limits are not

actually the extent of the law's power but rather the point at which it passes governance on to the patriarchy.

### **Unsuccessful Patriarchs, Unprotected Women, and the Victorian State**

<29> Truly vigorous, noble patriarchs who successfully protect their female dependents are not entirely absent in Victorian literature. For example, Mr. Home in *Villette* subjects his daughter's suitor to "an interrogation and a scrutiny on many things," making entirely certain that he possesses a "sound foundation" to both his character and his finances (Bronte 435). Mr. Home's exertions prove successful; his daughter is provided for and entrusted to a man who also proves himself a worthy protector. But in Victorian literature as, perhaps, in Victorian life, examples of successful patriarchal protection are the exception rather than the rule. More common are unsuccessful protectors, like Mr. Meagles in *Little Dorritt*, who exerts himself fully to protect his beloved daughter but still lives to see her unhappily married, or *Middlemarch's* Mr. Brooke, who is kind enough but simply too weak to ensure Dorothea's welfare. Of course, most memorable of all are those like Percival Glyde or Heathcliff, scoundrels who exploit their patriarchal power for their own gain. As the tribulations of Mrs. Martha Jones, *née* Struggles, comically emphasized and those of Laura Fairlie and Lizzie Eustace more soberly demonstrated, the "struggles" of "unprotected females" were no small problem in a society that left women little recourse if their relevant protector proved to be an absent, weak, or ignoble patriarch.

<30> The legal fiction of the noble patriarch underwrites the state's delegation of its power and duty to protect and govern, working to extend the state's power through the individual men to whom falls the governance of their respective families. Thus, the law assumes continuity between the state and the patriarch and designates a point at which the state passes on the authority to govern, a point after which the law expects the patriarch nobly and ably to protect and provide for his dependents. But, as we've seen in *The Woman in White* and *The Eustace Diamonds*, this link does not always hold. A zone of tension exists between the state and the patriarch, a space replete with gaps, overlaps, and slippages between the two authorities. If their relevant protectors fail to achieve a fictitiously lofty degree of nobility, Victorian women are left unprotected in this gap. Once the legal fiction of the noble patriarch has been revealed and the gap in the protection of women exposed along with it, the literature leaves us with questions about how to fill the void, about how to provide for these women who are protected by neither patriarch nor state. Two possibilities present themselves: the legal empowerment and enfranchisement of women, or the extension of the state to govern those areas traditionally left to individual patriarchs. Of course, by the final decades of the century, Victorian society grappled with both of these possibilities. The texts considered here suggest that Victorian literature did much to publicize the plight of unprotected women and to advance their eventual legal empowerment, perhaps not least by exposing the law's faulty reliance on the fiction of the noble patriarch.

<31> The problematic encounters of Martha Struggles, Laura Fairlie, and Lizzie Eustace with the legal and patriarchal powers that are supposed to be protecting them uncover the sometimes complementary, often conflicting, always slippery dynamic between the authority of the law and that of the patriarch. The law rests on the legal fiction of the noble patriarch, and the patriarch

depends on the law to legitimize his power. Each constantly undermines–reinforces the other, one’s exercise of power exposing–extending the other’s limits, even as they share–vie for the power of governing–protecting Victorian women.

### Endnotes

(1)I gratefully acknowledge Kabi Hartman’s contribution to my thinking on Victorian novels’ tendency to endorse “good” patriarchal behavior.(^)

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