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THOMAS HARDY'S LEGAL FICTIONS

SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
TO
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SUMMARY

The objective of this thesis is to demonstrate that Hardy's role as a magistrate had a pervasive effect on his development of the tragic novel and to argue that legal issues are integral to the narrative pattern of his tragic plots, which involves the legal marginalization of the tragic protagonist. I argue that Hardy constructed his tragic fiction through presenting legal issues, primarily to reflect the contemporary position of legally disenfranchised elements of society, namely, agricultural labourers and women. Hardy's legal plots also highlight flaws in the newly-reformed judicial system. Although his novels engage with and critique contemporary legal reforms long after they had been implemented by a series of legislative acts, Hardy's tragic novels highlight many contemporary socio-economic and legal issues still in need of reform for the benefit of those marginalized by the law. Hardy's critique of the law is also rendered through the carnivalesque depiction of the newly-developed constabulary and trial procedure in *The Mayor of Casterbridge*. I also demonstrate that pseudo-trial scenes take place in the domestic realm in many of the novels, as Hardy engages with the debate surrounding the newly-implemented provision of legal defence counsel in metaphorical trial scenes. Drawing on theory from the interdisciplinary study of Literature and the Law, I demonstrate that Hardy's narratives mirror defence counsel, providing a counter-discourse, which opposes and subverts that of civic law. Finally, this thesis finds that the deaths in Hardy's tragic novels are suicides resulting from the tragic character's legal marginalization and that his novels thus function as a critique of the elitist and reductive nature of the operation of the law.

The methodology employed in the research and writing of this dissertation consisted of the following: I studied court records covering Hardy's judicial career and also critical studies on his legal interests. I examined the contemporary socio-political and legal contexts of the time settings of the novels and I applied the findings to textual analysis of Hardy's novels. In addition to Hardy's novels, letters and notebooks, notably, the recently-published 'Facts' notebook, research materials included court records, contemporary local newspapers and studies of Victorian popular culture.

DECLARATION

This dissertation has not been submitted as an exercise for a degree at this or any other university and is entirely the work of the candidate, who agrees to allow the Library of Trinity College Dublin to lend or copy this dissertation upon request.

Trish Ferguson

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I extend my heartfelt gratitude to both my supervisor, Dr. Jarlath Killeen, for generously and tirelessly sharing his expertise throughout the final years of this dissertation and to Professor Nicholas Daly for guiding me toward the formulation of this thesis in its early stages. I have been privileged to have two such outstanding supervisors and have benefited greatly from their expertise, insights and advice.

I extend my warm appreciation to the Thomas Hardy Society for the opportunity to share in their enthusiasm for Hardy at the Seventeenth International Thomas Hardy Conference and Festival in Dorchester in July 2006. It gave me the greatest pleasure to learn from the current research in Hardy studies and to gain invaluable advice from many eminent Hardy scholars, including Simon Gatrell, Michael Irwin and Phillip Mallett.

I also extend my thanks to staff of the Dorset County Museum, in particular Andrew Munro, for the opportunity to research Hardy's court records and local newspapers. I am also grateful for the opportunity to consult the manuscript of *The Return of the Native* in the Special Collections department in the Library of University College Dublin.

I am greatly indebted to my friend and mentor Dr Elizabeth Mannion who has always generously given me her time, advice and encouragement. I am also deeply indebted to Declan Treanor, whose support over the last five years has contributed to the completion of this dissertation.

Finally, I would like to express my deepest thanks to my family, to whom this dissertation is dedicated.

TEXTUAL NOTE

Except where otherwise indicated, page references to Hardy's prose fiction are to the Macmillan Wessex Edition. Parenthetical page references will include abbreviations pertaining to the novels as follows:

<i>A Pair of Blue Eyes</i>	<i>PBE</i>
<i>Desperate Remedies</i>	<i>DR</i>
<i>Far from the Madding Crowd</i>	<i>FMC</i>
<i>Jude the Obscure</i>	<i>JO</i>
<i>Tess of the d'Urbervilles</i>	<i>TD</i>
<i>The Mayor of Casterbridge</i>	<i>MC</i>
<i>The Return of the Native</i>	<i>RN</i>

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INTRODUCTION: DIVIDED LOYALTIES

On the 3rd of January 1857, in the *Saturday Review*, Justice James Fitzjames Stephen (1857) denounced the practice of novelists engaging with legal issues in the realm of fiction:

They are the most influential of all teachers – the teachers who make themselves friends and companions during those occasional intervals of rest and enjoyment which to many minds are far the pleasantest of life. The production, among such readers, of false impressions of the system of which they form a part – especially of the falsehood which tends to render them discontented with and disaffected to the institutions under which they live – cannot but be a serious evil, and must often involve great moral delinquency. Except the relations between men and their Maker, no subject can be more grave than Legislation, Government, and the Administration of Justice.¹

Justice Stephen's denunciation of novels that engage with the Law points to the actual prevalence of legal issues in the nineteenth-century novel. The plots of Victorian novels frequently centre around issues of parentage, legitimacy, inheritance and marriage. The novel can be seen to uphold the Law, which, through its dispensation of rewards, provides many of the traditional happy endings of nineteenth-century novels. This includes rewarding the virtuous hero or heroine through legal means, such as marriage or inheritance, with a concomitant rise in class. However, novelists also used the medium of narrative fiction to expose specific failings of the Law, Dickens' *Bleak House* being a classic case in point. Novels in which legal situations are worked out often depict the Law as class-biased, reductive and mechanical, divorced from the reality of the lived experience.

Justice Stephen's fear of the power of novels highlights the fact that novelists held considerable influence over public opinion and contributed to the broad and

¹ Sir James Fitzjames Stephen, 'Mr Dickens as a Politician' in *Saturday Review* 3, 1857, pp.8-9, p.8

sweeping changes in criminal punishment which, during the course of the eighteenth and nineteenth centuries, were in the process of being honed through a series of legal reforms which reflected a shift in philosophy regarding the Law toward basing it on scientific principles. Novelists had a surprisingly significant impact on legal reform and were often actively engaged in legal duties: Henry Fielding, Anthony Trollope and Thomas Hardy all held active roles as magistrates and Dickens expressed his desire for a judicial role,² stating in a letter to Lord Morpeth: 'I have hoped, for years, that I may become at last a Police Magistrate.'³ Whether engaged in judicial activity or interested in the contemporary legal reforms, in essays and fiction novelists both advocated for reform and commented on the changes that were implemented. In the eighteenth century, novelists made significant contributions to the sociological progression toward the model of incarceration, through their public rejection of public physical punishment. Henry Fielding had a prolific career as a legal reformer as well as a successful literary career acting as Justice of the Peace, or magistrate, from 1748 until his death in 1754. His chief contribution was in the founding of the Bow Street Runners, the forerunners of Robert Peel's police force. He was also instrumental in the dissolution of the notoriously harsh criminal justice system of the eighteenth century, known as the 'Bloody Code' through his writing a series of essays in which he argued that justice would be better served if punishments scaled according to the severity of the crime were administered with a greater sense of certainty. In 'Enquiry into the Late Increase of Robbers' (1751), Fielding argues that execution does not unite ideas of death and shame but rather that as an object of terror, it inculcates the tragic responses of admiration and pity⁴ and on this ground he argues that execution 'should be in some degree private,'⁵ a sentiment echoed by Dickens.⁶ Fielding's concerns with the shortcomings of the contemporary legal system are reflected in his novels which highlight corruption

² Philip Collins, *Dickens and Crime* (New York: St. Martin's Press, 1994), pp.177-78

³ Kathleen Tillotson, ed., *The Letters of Charles Dickens*, vol. 4 1844-1846 (Oxford: Clarendon, 1977), pp.566-67

⁴ Henry Fielding, 'An Enquiry into the Late Increase of Robbers' in Malvin R. Zirker, ed., *An Enquiry into the Late Increase of Robbers and Related Writings* (Oxford: Clarendon, 1988), pp.61-178, pp.168-69

⁵ *Ibid*, p.169

⁶ David Paroissien, ed., *Selected Letters of Charles Dickens* (London: Macmillan Press, 1985), p.253

within the Law, inefficiencies in legal administration, lack of help for victims of crime and judgment based on testimony rather than on carefully weighed circumstantial evidence. Dickens also scorned aspects of contemporary civil law, memorably holding up the inefficiency of the Court of Chancery for ridicule in *Bleak House* (1852-3). Fielding and Dickens shared a reformatory impulse, Fielding in favour of incarceration rather than capital punishment and Dickens advocating reformation of the prison system.

The study of the Law in novels is not confined to analysis of the role of legal issues as a plot mechanism. The structural affinity that the novel has with the Law, and in particular, the legal trial, has been the subject of much critical inquiry in recent years. This affinity, as fundamentally defined by Weisberg and Baricelli, is that 'Law is associated with Literature from its inception as a formalized attempt to structure reality through language.'⁷ As Robert A. Ferguson has noted, both fiction and the Law are forms of story-telling.⁸ Structurally, trials, like novels, are narrative accounts that are structured temporally and are comprised of competing narratives organized by a controlling framework and directed to an audience. Richard H. Weisberg focuses on the role of the novel's audience as a type of jury weighing evidence, arguing that

the use of legalistic structures [...] perfectly fits the digressive tendencies of the novelistic form, forcing the reader to stop and start, backtrack, and focus on details, rather than make the smooth temporal progress.⁹

Ian Watt elaborates on the similarity between the novel's readership and the courtroom jury:

⁷ Richard Weisberg and Jean-Pierre Baricelli, 'Literature and Law' in Jean-Pierre Baricelli and Joseph Gibaldi, ed., *Interrelations of Literature* (New York: The Modern Language Association of America, 1982), pp.150-75, p.150

⁸ Robert A. Ferguson, 'Untold Stories in Law' in Peter Brooks and Paul Gerwitz, ed., *Law's Stories: Narrative and Rhetoric in Law* (New Haven; London: Yale University Press, 1996), pp.84-98, pp.84-85

⁹ Richard H. Weisberg, *The Failure of the Word: the Protagonist as Lawyer in Modern Fiction* (New Haven; London: Yale University Press, 1984), pp.135-6

[T]he novel's form of imitating reality may therefore be equally well summarized in terms of the procedures of another group of specialists in epistemology, the jury in a court of law.¹⁰

The usefulness of the interdisciplinary study of Literature and the Law has been contested. Richard Posner has contended that the disciplines are distinct and have little to offer each other on the grounds that there are two different interpretive tasks for each discipline; the former seeks authorial intention while legal scholarship attempts 'to assign a coherent and satisfying meaning' to a text.¹¹ However, while Posner contends that literature has little to contribute to the interpretation of statutes and constitutions, he suggests that it has 'perhaps a great deal, to contribute to the understanding and improvement of judicial opinions.'¹² Stanley Fish argues that legal discourse cannot be unambiguous and that it, like any discourse, requires context as the basis for interpretation. Fish accuses Posner of failing to appreciate the fact that disciplines 'exist in networks of affiliation and reciprocity' and points to the influence of literary theory on interpretation in the legal world.¹³ It has been argued that fictional narrative can provide a competing resolution which is often more liberal and judicious than that provided by official Law.¹⁴ As Jan-Melissa Schramm notes:

Authors are [...] liberated by artistic licence to snatch a protagonist from the gallows, to reverse judgements at will or to act on the basis of information which would not have been available to a court. The exclusionary rules of evidence, provided much material for criticism

¹⁰ Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: The Hogarth Press, 1987), p.31

¹¹ Richard Posner, 'Law and Literature: a Relation Reargued' in *Virginia Law Review* 72(8), 1986, 1351-1392, p.1362

¹² Posner, 'Law and Literature: a Relation Reargued,' p.1351

¹³ Stanley Fish, 'Don't Know Much About the Middle Ages: Posner on Law and Literature' in *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Oxford: Clarendon Press, 1989), pp.294-311, p.310

¹⁴ For a discussion of critical studies that deal with this perceived disparity between Literature and the Law, see Anthony Julius's Introduction to Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.xi-xxv.

in the press. If this witness had been allowed to give evidence, what would he or she have said? If this piece of evidence had been available to the jury, would they have reached a different decision? It is equally arguable that authors of fiction share this interest in what falls outside the law, that they somehow require a legal lacunae in order to find their own imaginative space in which to pursue their own quest for justice.¹⁵

Jane Baron notes that humanist interdisciplinary studies of Law and Literature posit literature as

a source of knowledge about human nature — especially about people different from lawyers themselves. It can also help correct lawyers' tendency to rely excessively on abstract reason over forms of understanding that are emotional, intuitive and concrete. Finally, literature, it is said, can provide training in making the moral judgments with which lawyers are faced all the time. Literature, in short is a source of values otherwise missing from the law.¹⁶

Richard Weisberg's *The Failure of the Word* is an example of the literary approach that seeks to critique the Law in the interest of instigating legal reform.¹⁷ An example of a critical study on an individual work which critiques the Law is Melanie Williams's analysis of *Tess of the d'Urbervilles*, which, she argues 'is a pertinent text with which to critique aspects of the doctrine of provocation primarily because it *upbraids* the law.'¹⁸ Through narrating three different 'legal' representations of Tess's case Williams contrasts the summary treatment of Tess's case in the novel with a second narrative which approximates to the present state of the law and a third, more individualised and less austere representation, which 'approximates to

¹⁵ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000), p.10

¹⁶ Jane B. Baron, 'Interdisciplinary Legal Scholarship as Guilty Pleasure' in Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.21-45, pp.40-41

¹⁷ Weisberg, *The Failure of the Word: the Protagonist as Lawyer in Modern Fiction*

¹⁸ Melanie Williams, 'Tess of the d'Urbervilles and the Law of Provocation' in Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.167-90, p.170

Hardy's own version of events.'¹⁹ Williams thus demonstrates that the 'hypothetical 'case' put forward in *Tess* leads on to question and interrogate criminal law's blinkered focus upon factors which, while attempting to create a reliable formula for identifying the truly malevolent killing, is both austere and artificial.'²⁰ Jan-Melissa Schramm posits the question 'Is Literature More Ethical than Law?' in the context of the advent of defence counsel, which emerged as a result of the Prisoners' Counsel Act (1836).²¹ She explores literary representations that interrogate the ethical responsibilities of legal representatives for felons in the position of representing a client whom they know to be guilty. Furthermore, Schramm notes that through the heightened newspaper interest and coverage of high profile murder cases 'an audience [...] was thus being taught to monitor the just administration of the criminal law.'²² Thus 'a nexus [was] established which, with the enactment of the Prisoners' Counsel Act in 1836, was shortly to bring authors and criminal barristers into close competition.'²³

The Prisoners' Counsel Act of 1836 reshaped the form of trial procedure, allowing both sides of a legal dispute to be represented by legal counsel. John Copley argued against the implementation of the Act on the grounds that the introduction of defence counsel would

convert the court into an arena, where opposing advocates might meet in professional conflict, and where, instead of endeavouring to elicit the truth by a reference to plain facts, or the real merits of the case, the time of the public would be wasted by contests between the counsel on either side, animated, as they

¹⁹ *Ibid*, p.175

²⁰ Williams, 'Tess of the d'Urbervilles and the Law of Provocation,' p.167

²¹ Jan-Melissa Schramm, 'Is Literature More Ethical than Law? Fitzjames Stephen and Literary Responses to the Advent of Full Legal Representation for Felons' in *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.417-35

²² *Ibid*, p.421

²³ *Ibid*, p.421

would be, by all the excitement, zeal, and pertinacity, which such contests usually inspired.²⁴

With the advent of the Prisoners' Counsel Act, the trial provided a forum for ambiguity and disputation, which mirrored the heteroglossia of the novel. John Bender and Alexander Welsh stress this similarity between narrative and trial procedure with the role of narration functioning as a competing construction of events to that of direct testimony with both claiming precedence in the construction of reality itself.²⁵ Jonathan Grossman, links developments in the shaping of trial procedure with its newly developed organization of competing narratives to novelists' innovations in literary form, such as the omniscient narrator, who organizes the narrative through having access to the thoughts and emotions of all protagonists.²⁶ Alexander Welsh argues that the novel, like the law court, is a forum in which circumstances and evidence speak for themselves and displace direct testimony. Welsh's study focuses on novels in which 'there are not eyewitnesses or narrators in a position to tell what happened at first hand.'²⁷ The role of the third-person narrator is further explored in *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (2003). Rodensky engages with Victorian legal theorists in an examination of how questions of criminal responsibility are explored in the novel and she demonstrates that 'the Victorian novel's power to represent the interior life of its characters both challenges the Law's definitions of criminal responsibility and reaffirms them.'²⁸ Rodensky's study of George Eliot's novels offers an analysis of the ways in which 'Eliot's work reflects a shift in focus and emphasis from consequences to intents, motives, desires – a shift from the external to the internal,

²⁴ Parliamentary Debates (London, 1826), vol. 15, col. 599, 25 April 1826, cited by Jan Melissa Schramm in 'Is Literature More Ethical than Law? Fitzjames Stephen and Literary Responses to the Advent of Full Legal Representation for Felons,' p.422-23

²⁵ John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago; London: The University of Chicago Press, 1987); Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore; London: John Hopkins University Press, 1992)

²⁶ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (London: John Hopkins UP, 2002), pp.22-23

²⁷ Welsh, *Strong Representations*, p.6

²⁸ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003), p.7

from the objective to the subjective in assessing accountability.²⁹ This shift toward the subjective experience of the criminal enabled through narrative can serve to question the objective legal judgment. In *Testimony and Advocacy in Victorian Law, Literature and Theology* (2000), Jan-Melissa Schramm argues that ‘the representation of testimony in nineteenth-century realist fiction is often closely allied to proof of innocence rather than guilt’³⁰; thus, ‘the history of the realist novel is also a history of strategies of acquittal.’³¹ The novel can thus question judgments and can, as Baron notes, point to the Law’s ‘tendency to rely excessively on abstract reason over forms of understanding that are emotional, intuitive and concrete.’³²

Fiction has the capacity to challenge legal judgments within its narrative because of the existence of an alternate source of judgment: the narrator. While a legal case in a work of fiction relies solely on circumstantial evidence, the narrator aims to represent an omniscient version of events including interiority and motivation. Hilary Schor in ‘Show-Trials’ (1999) argues that the outcome of a novel’s plot can be seen to compete with an official legal trial: ‘The novel [...] opposes itself to its specular double as it both stages and displaces the trial as a form of truth-telling.’³³ Schor argues that the novelist’s omniscient narration aims for all-encompassing Realism and control. Schor argues that Realism ostensibly has greater power for revealing truth than does the legal trial, but that Realism is bound by its own limitations; thus she identifies a profound ambivalence about trials in the novels she examines. In the trial scene in the novels of both Elizabeth Gaskell and George Eliot Schor argues that the heroine is staged as a spectacle:

[T]hese trials turn not on the marshalling of documentary evidence or ocular proof, but the power of conviction: the testimony of a woman who “proves”

²⁹ *Ibid*, p.85

³⁰ Schramm, *Testimony and Advocacy in Victorian Law*, pp.5-6

³¹ *Ibid*, p.6

³² Baron, ‘Interdisciplinary Legal Scholarship as Guilty Pleasure,’ p.40

³³ Hilary Schor, ‘Show-Trials: Character, Conviction and the Law in Victorian Fiction’ in *Cardozo Studies in Law and Literature* 11(2), 1999, pp.179-195, p.180

the essential (not legal, but moral and affective)
innocence of the criminal.³⁴

Schor concludes that the overturning of conviction becomes 'the victory of human hearts, the invention of a higher law',³⁵ and makes the Law appear an arbitrary, unnecessary formality.³⁶ The *Oxford Reader's Companion to George Eliot* (2000) includes an entry on 'Law' which notes Eliot's interest in 'quasi-legal' forms of judgment and the exploration of guilty intentions that fall short of legal culpability.³⁷ There has been a general shift in Literature and the Law studies of the Victorian novel toward interest in the role of narration, as evidenced by studies such as Welsh (1992), Schor (1999), Grossman (2002) and Rodensky (2003). However, Simon Petch has recently observed that while the *Oxford Reader's Companions* to Trollope, Dickens and Eliot include entries on these novelists' interest in the Law and legal matters in their fiction, there is no comparable entry for Hardy in this series.³⁸

Hardy's role as a magistrate remains an unexplored area of Hardyan scholarship, perhaps because there is little reference to it in his autobiography, *The Life of Thomas Hardy* (1928), on which he collaborated with his wife Florence Emily.³⁹ There is also little evidence of his legal interests in his correspondence. An intensely private man, Hardy burned many of his notes and letters having written up selected notes into his autobiography. Edward C. Sampson has provided an excellent biographical basis from which to consider how Hardy's role as a magistrate impacted on his literary imagination.⁴⁰ Sampson traces Hardy's career from borough magistrate at Quarter Sessions to his role as grand juror at the Assizes. Having researched all records of Hardy's attendance at court, Sampson provides an account

³⁴ *Ibid*, p.185

³⁵ *Ibid*, p.186

³⁶ *Ibid*, p.192

³⁷ John Rignall, ed., *Oxford Reader's Companion to George Eliot* (Oxford: Oxford University Press, 2000), pp.194-95, p.195

³⁸ Simon Petch, 'Law, Literature and Victorian Studies' in *Victorian Literature and Culture*, 35(1), 2007, pp.361-84, p.361

³⁹ Florence E. Hardy, *The Life of Thomas Hardy*, edited by Michael Millgate, (London: Macmillan, 1984)

⁴⁰ Edward C. Sampson, 'Thomas Hardy: Justice of the Peace' in *Colby Library Quarterly* 13, 1977, pp.263-73

of the kind of trials that Hardy attended and the nature of his role at each type of hearing. His study has been followed by some excellent research into Hardy's interest in legal reform and specific court cases.

Hardy's role as an active court magistrate from 1884 to 1919 spanned much of his novel-writing career, from *The Mayor of Casterbridge* to *Jude the Obscure*. Hardy qualified as a borough magistrate for Dorchester at the Easter Quarter Sessions of 1884.⁴¹ Dorchester was an assize town and the centre of judicial administration in Dorset. As a borough magistrate, Hardy sat at Borough Petty Sessions, which met approximately weekly.⁴² Minor local offences, such as disturbing the peace, were handled on the spot by the local magistrate, but more serious charges were handled at the quarter sessions or the assizes. Legal issues that commonly arose in cases which Hardy attended included drunkenness, poaching, licensing issues, theft, failure to provide an adequate public service and tax evasion.⁴³ Magistrates were unpaid and not required to have any legal training.⁴⁴ Instructions on legal procedure in each of these cases were listed in Samuel Stone's *Justice's Manual*. Hardy kept a copy of this pocket-book which was, in the words of the author,

intended to furnish, in a portable form, a convenient
Alphabetical Reference to Such Orders under the Penal
Criminal Law, as comprise the *ordinary* business of the
Petty and Quarter Sessions.⁴⁵

In April 1894 Hardy progressed in his magisterial role, qualifying to sit at County Petty Sessions and to serve as a magistrate in the Quarter Sessions to act as Justice of the Peace for the County of Dorset.⁴⁶ The Quarter sessions, occurring at least four times each year, called for the assembling of all the justices in the county and the persons charged were brought to town for trial. As a magistrate at the Quarter

⁴¹ *Ibid*, p.264

⁴² *Ibid*, p.265

⁴³ *Ibid*, p.265

⁴⁴ *Ibid*, p.265

⁴⁵ Sir Thomas Skyrme, *History of the Justices of the Peace* (Chichester: Barry Rose and the Justice of the Peace, 1994), p.244

⁴⁶ Sampson, 'Thomas Hardy: Justice of the Peace,' p.266

Sessions, Hardy held the duty of determining the sentence if the judge pronounced the defendant guilty.⁴⁷ The Assizes were normally held twice a year to handle more serious criminal cases than were tried at Quarter Sessions. This event included an elaborate ceremonial arrival to town of the circuit-riding judges from London, such as Hardy depicts in Weatherbury in *Far from the Madding Crowd*:

At the end of half-an-hour a faint dust was seen in the expected quarter, and shortly after a travelling-carriage, bringing one of the two judges on the Western Circuit, came up the hill and halted on the top. The judge changed carriages whilst a flourish was blown by the big-cheeked trumpeters, and a procession being formed of the vehicles and javelin-men, they all proceeded towards the town, excepting the Weatherbury men, who as soon as they had seen the judge move off returned home again to their work (*FMC*, p.384).

Edward C. Sampson correctly concludes that Hardy's comment on his magisterial role in *The Life* that 'he acted but little at sessions' but that 'he was not infrequently at Assizes, where he would meet with capital offenses' is misleading, both understating his role as a magistrate and over-emphasizing his role as a grand-juror.⁴⁸ As Sampson notes, the quotation does however serve to highlight Hardy's chief interest and ambition within his judicial capacity: judging at the Assizes to which he progressed. In a letter of 1902, he refers sardonically to having 'the cheerful duty at next Wedny's Assizes of helping to find a true bill against two murderers.'⁴⁹ Although Assize cases were of a more serious nature than those handled at Quarter Sessions, not all were of the seriousness of murder charges. Sampson records some of the cases that were heard when Hardy attended the Easter Assize Sessions in 1895:

The court tried four prisoners: a bricklayer was found insane and ordered into custody; a shepherd was found

⁴⁷ *Ibid*, p.267

⁴⁸ *Ibid*, p.264

⁴⁹ Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 3, 1902-1908 (Oxford: Clarendon Press, 1982), p.23

innocent of charges against him; one laborer was sentenced to twelve months hard labor for wounding his wife with a knife - she was given a judicial separation; another laborer pleaded guilty to attempted buggary with a mare and received two months hard labor.⁵⁰

Sampson emphasizes that Hardy's role in Assize proceedings was minimal:

As a grand juror his only duty was to cast his vote for or against indictment of the defendant in the cases presented to the grand jury. He had no role in deciding the guilt or innocence of the prisoner, or in the sentencing of the prisoner, if found guilty by the regular jury.⁵¹

Hardy's last recorded attendance at Assize sessions was purely out of interest in a curious, high-profile 'sensational trial' of piracy in 1919 to which he was invited by judge, Mr Darling.⁵² In an interview with *The World* (1886) Hardy claimed that

he played the part of Justice Silence with great assiduity, though admitting that the duties of office keep him in touch with some of the sterner facts of existence that are apt to be lost sight of in the dream-world of books.⁵³

Florence Hardy, however, notes an overlap between fact and fiction:

When we were in London some time, ago, stopping with Mr. Justice Darling, we went into his court one day at the Bailey. The case that was being tried was of some young scoundrels who had been had up for piracy. It was obvious that the defending barrister knew he had a hopeless task. He was a young man of about

⁵⁰ Sampson, 'Thomas Hardy: Justice of the Peace,' p.269

⁵¹ *Ibid*, p.270

⁵² F.E. Hardy, *The Life of Thomas Hardy*, p.425

⁵³ Interview in *World*, 17 February 1886 reprinted in the *Dorset County Chronicle*, 18 February 1886, p.4., quoted by Sampson in 'Thomas Hardy: Justice of the Peace,' p.264

thirty – very handsome [...]; one could see he was a dreamer. There to the very life was Charles Ray.⁵⁴

Although Hardy's autobiography seems to reflect a desire to keep his literary and judicial roles distinct, his novels are imbued with legal issues and the questioning of issues, such as legal insanity, defence counsel and execution.

At the end of the nineteenth century an epistemological debate was in progress over execution. In *Introduction to the Principles of Morals and Legislation* (1789), Jeremy Bentham writes that 'nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do.'⁵⁵ Thus Bentham advocates a system of punishment based on the principle of deterrence in the belief that the potential criminal would be prevented from performing a criminal act if the pain of punishment exceeded the pleasure expected from the act. As evidenced in his autobiography and notebooks, Hardy was familiar with Bentham and J.S. Mill and seems to have subscribed to the general principle of deterrence. Hardy's response in 1903 when questioned on his opinion capital punishment affirms his belief in its deterrent effect:

As an acting magistrate I think that Capital Punishment operates as a deterrent from deliberate crimes against life to an extent that no other form of punishment can rival. But the question of the moral right of a community to inflict that punishment is one I cannot enter into in this necessarily brief communication.⁵⁶

It is likely that Hardy was familiar with work of Justice James Fitzjames Stephen, brother of Leslie Stephen, Hardy's friend, mentor and editor. Justice Stephen's three-volume study *A General View of the Criminal Law* (1863, 1883 and 1890) reflects

⁵⁴ Henry V. Collins, *Talks with Thomas Hardy at Max Gate 1920-1922* (London: Duckworth, 1978), p.77

⁵⁵ Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*, edited by J. H. Burns and H.L.A. Hart (University of London: The Athlone Press, 1970), p.11

⁵⁶ Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 3, p.58

the changing practice and perception of the efficacy of the Law over the latter half of the nineteenth century. Between the first two volumes of Stephen's *History*, public execution was abolished with the placing of the gallows behind prison walls in 1868, but debate about its efficacy continued. *The Times* in January 1883 reviewing Mr. Justice Stephen's 1883 volume stated that:

The retributive element of legal punishment has, according to Mr Justice Stephen's view, fallen too much into the background in modern feeling and practice. 'To the doer as he hath done – thus saith the thrice ancient word;' so we read in the "Agamemnon", and on this point Mr. Justice Stephen deserts Bentham – or, at any rate, the order of ideas which on the whole prevailed with Bentham – to follow Æschylus. He thinks the reaction against vindictive punishment has been carried to excess, and in particular that capital punishment so far from being undesirable in itself, or ripe for abolition, has been abolished in too many cases.⁵⁷

Hardy's response to the enquiry of his opinion of execution suggests that Hardy believed in its efficacy in terms of deterrence but in *Tess of the d'Urbervilles*, execution is depicted and described as retribution in the language of Greek tragedy. Hardy does not make a direct statement on his position in terms of the deterrence/retribution debate, but in *Tess* shows up the weakness of the absolutism of the Law in enforcing capital punishment for particular crimes without enquiring into the circumstances surrounding the criminal act.

Early criticism pointed to Hardy's well-documented fascination with execution, such as Gittings's *The Older Hardy*⁵⁸ and the studies of Hardy's short stories by Kristin Brady (1982)⁵⁹ and Charlotte Lindgren (1985).⁶⁰ For Hardy, imagery pertaining to

⁵⁷ 'Mr. Justice Stephen On The Criminal Law,' in *The Times*, Jan. 27, 1883, sec. A: 10

⁵⁸ Robert Gittings, *The Older Hardy* (London: Heinemann, 1978), p.205

⁵⁹ Kristin Brady, *The Short Stories of Thomas Hardy* (London: Macmillan, 1982)

⁶⁰ Charlotte Lindgren, 'Thomas Hardy: Grim Facts and Local Lore' in *Thomas Hardy Journal* 1(3), 1985, pp.18-27

execution imbued the heath of his youth and formed a backdrop to his fictional Wessex landscape. As Florence Hardy notes in a letter to Lady Hester Pinney:

Of course the account T.H. gives of the hanging is vivid and terrible. What a pity that a boy of sixteen should have been permitted to see such a sight. It may have given a tinge of bitterness and gloom to his life's work.⁶¹

Hardy's autobiography records his vivid recollections of hangings, one viewed on the heath a quarter of a mile from his house.

He took up the big brass telescope that had been handed on in the family, and hastened to a hill on the heath a quarter of a mile from the house, whence he looked towards the town. The sun behind his back shone straight on the white stone façade of the gaol, the gallows upon it, and the form of the murderer in white fustian, the execution and officials in dark clothing and the crowd below invisible at this distance of nearly three miles. At the moment of his placing the glass to his eye the white figure dropped downwards, and the faint note of the town clock struck eight.⁶²

The heath itself on which Hardy witnessed the execution later became the setting of *The Return of the Native*, Egdon Heath, and also features in the background of the landscape of *Tess of the d'Urbervilles*.

Hardy was also fascinated by accounts of the execution of Mary Channing. Florence Hardy recalled a visit to Lady Ilchester and her daughter at which Hardy gave a detailed account of the execution of Mary Channing by burning. She recalls: "I tried to stop him, for the daughter turned quite white – she is only fifteen."⁶³ This emphasis on Hardy's morbid fascination with execution is clearly not misplaced and

⁶¹ Lady Hester Pinney, *Thomas Hardy and the Birdsmoorgate Murder 1856* (Beaminster: The Toucan Press, 1966), p.2

⁶² F.E. Hardy, *The Life of Thomas Hardy*, p.33

⁶³ Gittings, *The Older Hardy*, p.205

we can concur with a smile with Mrs Jeune who, having seen an adaptation of 'The Three Strangers' wrote to Hardy:

Your play was simply delightful, full of life and very dramatic. Nobody but you would ever have thought of the hangman showing his victim how the rope was to be put round his neck.⁶⁴

Hardy's stage directions indeed give the instruction to 'suit action to word' when the hangman describes the execution of his office.⁶⁵

Reasons for Hardy's interest in execution have not been fully considered. Henry Woodd Nevinson suggests that:

The subjects have for him a horrible fascination that comes of extreme sensitiveness to other people's pain. I suppose that if we all had that intensity of imagination we should never do harm to any human being or animal or bird, certainly not in cruelty.⁶⁶

This speculation that Hardy's interest in execution stemmed from sensitivity to cruelty is supported by autobiographical evidence; Hardy's recollections attest to his sensitivity to the cruelty of punishments:

February 6. Sunday. To see my father. It was three men whom he last saw flogged in Dorchester by the Town pump – about 1830. He happened to go in from Stinsford about mid-day. Some soldiers coming down the street from the Barracks interfered, and swore at Davis (Jack Ketch) because he did not 'flog fair'; that is to say he waited between each lash for the flesh to recover sensation, whereas, as they knew from

⁶⁴ Letter in the Thomas Hardy Memorial Collection, Dorset County Museum, cited by Keith Wilson in 'Hardy and the Hangman: The Dramatic Appeal of 'The Three Strangers' in *English Literature in Transition* 24, 1981, pp.155-160, p.155

⁶⁵ Thomas Hardy, *The Three Wayfarers*, (New York: The Fountain Press; London: The Cayme Press, 1930), p.27

⁶⁶ James Gibson, ed., *Thomas Hardy: Interviews and Recollections* (Basingstoke: Macmillan, 1999), p.79

experience, by striking quickly the flesh remained numb through several strokes.⁶⁷

I am told that when Jack Ketch had done whipping by the Town Pump [Dorchester] the prisoners' coats were thrown over their bleeding backs, and, guarded by the town constables with their long staves, they were conducted back to prison. Close at their heels came J.K., the cats held erect – there was one cat to each man – the lashes were of knotted whipcord.⁶⁸

Thomas Hardy was born at a time when punishment was still a spectacle, an eye-sore in the public consciousness. His own great sensitivity meant that much of what he saw remained ingrained on his memory for life. In an interview with William Archer in 1901, he recalled the sight of a man in the stocks and that he had thought the man a hero and said good-day to him.⁶⁹ He also internalized much of what he heard from his mother and maternal grandmother regarding public punishment. In the poem 'One We Knew,' Hardy refers to one of his grandmother's memories of a late eighteenth-century punishment, when young offenders were tied to a moving cart and whipped as it went through the streets. Hardy also heard handed down memories of Judge Jeffrey's Bloody Assize following the Monmouth rebellion and of the fate of the Tolpuddle Martyrs, transported for life for forming a workers' union.⁷⁰ Charlotte Lindgren locates Hardy's sensitivity to execution in class-issues, noting that

although Thomas Hardy constantly emphasized that his father was an independent craftsman, the family was close enough to the labouring class to be sympathetic to the agricultural revolts of the 1830's.⁷¹

⁶⁷ F.E. Hardy, *The Life of Thomas Hardy*, p.192

⁶⁸ *Ibid*, p.129

⁶⁹ William Archer, ed., *Real Conversations with Eminent Characters in Literature and the Drama*, (London: William Heinemann, 1904) p.68

⁷⁰ For a first-person account of the experience of one of the Tolpuddle Martyrs, cf. George Loveless, *The Victims of Whiggery: Being a Statement of the Persecutions Experienced by the Dorchester Labourers, Their Trial, Banishment, &C., Also Reflections Upon the Present System of Transportation with an Account of Van Dieman's Land, Its Customs, Laws, Climate, Produce and Inhabitants* 2nd ed. (London: Communist Party of Great Britain, 1969)

⁷¹ Lindgren, 'Thomas Hardy: Grim Facts and Local Lore,' pp.18-19

Much of Hardy's reading demonstrates his interest in the legally-marginalized labourer. In 1912, William Rothenstein sent Hardy a copy of J.L. Hammond and Barbara Hammond's *The Agricultural Labourer, 1760-1832*, to which he responded with thanks. The letter is worth quoting in full:

I have read with much interest a good deal of the book you kindly sent me. With details of the last peasant revolt I have, of course, been familiar from childhood, though it occurred earlier than my actual recollection carries me. My father knew a man who was hanged for saying to a farmer "It will be a light night" – (his ricks being set fire to before the morning). As a child I personally knew a boy who was starved to death in "the hungry forties" during my absence in London with my mother. He used to keep sheep near our house. However, those times are happily over, & things are a little the other way now, for the farm-labourers are very comfortable, & better off than the London poor — .⁷²

Hardy's concern with the plight of the work-folk permeates his fiction, but perhaps nowhere more forcibly than in his short story 'The Three Strangers' (1883), which he adapted into a one-act play *The Three Wayfarers* in 1893. The plot pits the wit of clock-maker, Timothy Summers, who is condemned to death for stealing a sheep, against the enforcers of the Bloody Code, epitomized by the hangman. The story features contrasts of labourer/law and rural/urban, which favour Timothy and the rural social group that aids in his escape. By contrast to the sympathetic depiction of the clock-maker is the theatrical representation of the enigmatic hangman, who sings a ballad to indicate his profession and is depicted by the narrator as the personification of Evil: 'some of them seemed to take him for the Prince of Darkness himself, till they formed a remote circle, an empty space of the floor being left between them and him.'⁷³ In *The Three Wayfarers*, on Timothy's escape, the

⁷² Richard L. Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 4, 1909-1913 (Oxford: Clarendon Press, 1984), p.206

⁷³ Thomas Hardy, 'The Three Strangers' in F.B. Pinion ed., *Wessex Tales and A Group of Noble Dames* (London: Macmillan, 1977) pp.13-32, p.25

Shepherd's wife voices the feelings of the company at large and implicitly, the audience:

"I'm unlawfully glad of it. He were a nice civil man, and his punishment would ha' been too heavy for his sin. So brave and daring and cool as he was to sit here as he did! I pray they'll never catch him."⁷⁴

Thus escaped convict Timothy Summers becomes a legendary local hero, who, as Francesco Marroni notes, becomes symbolic of 'his revolt against the city and its law.'⁷⁵ The narrator of 'The Three Strangers' likewise concludes the story with the observation that 'the intended punishment was cruelly disproportioned to the transgression, and the sympathy of a great many country-folk in that district was strongly on the side of the fugitive.'⁷⁶ Hardy, like his sympathetic narrator, is likely to have deemed the letter of the Law to be too harsh, and in his fiction, shows the disparity of crime and punishment which he witnessed first hand in the courtroom.

Hardy's depiction of the legally marginalized rural poor points not only to their facing the harshest sentence of the Law under the Bloody Code but also to their disadvantaged position within the forum of legal trial. Harold Orel notes that Hardy's re-thinking the evidence used to convict Mary Channing, and cases where 'punishment exceeded the requirements of justice.'⁷⁷ Of Mary Channing's case, Orel argues that

If Hardy really believed that justice had gone astray in this case, or (what is tantamount to the same thing) that the evidence on which the judicial decision had been based deserved re-examination because it was largely second-hand in nature and extenuating circumstances had not been taken into account, the horribleness of the

⁷⁴ Hardy, *The Three Wayfarers*, p.34

⁷⁵ Francesco Marroni, "'The Three Strangers' and the Verbal Representation of Wessex' in *Thomas Hardy Journal* 8(2), 1992, pp.26-39, p.37

⁷⁶ Hardy, 'The Three Strangers,' p.32

⁷⁷ Harold Orel, 'Hardy's Interest in the Law' in *The Unknown Thomas Hardy: Lesser-known Aspects of Hardy's Life and Career* (Brighton: Harvester, 1987), pp.127-45, p.141

details of the execution, recorded faithfully by a soon-to-be octogenarian, underscored the need for officers of the law to move more slowly and majestically before proceeding to a final disposition of a capital judgment.⁷⁸

Hardy's reassessment of this real-life trial and evidence used therein provides some insight into the underlying principle behind his fictionalization of legal issues, which serve to illustrate the deficits he perceived in the form of trial procedure and in particular, legal discourse. Kristin Brady argues in her analysis of his short stories, that Hardy's familiarity with the Law results in his 'unobtrusive but deliberate use of legal language throughout the narrative [which] invites the reader to analyse events as though in a court room.'⁷⁹ In response to Brady's study, Penelope Pether examines Hardy's deployment of legal language in her analysis of 'On the Western Circuit' and 'An Imaginative Woman,' arguing that the use of legal discourse is linked to social criticism.⁸⁰ Pointing to Raye's 'access to the privileged language of the law,'⁸¹ Pether suggests that legal discourse is gendered:

Hardy describes Raye, sitting idly in the courtroom of the county-town next-but-one on the circuit of Melchester, blaming his seduction, deception and abandonment of Anna as "unpremeditated conduct." Thus by a piece of self-deluding sophistry he is able to remove the mens rea from the actus reus and to render his conduct not something worthy of punishment.⁸²

In 'Sex, Lies and Defamation: The Bush Lawyer of Wessex,' (1994) Pether argues that women are legally marginalized by the fact that legal language is male: 'Everywhere in Hardy's texts he shows us how the law in all its branches, contract,

⁷⁸ *Ibid*, p.130

⁷⁹ Kristin Brady, *The Short Stories of Thomas Hardy* (London: Macmillan, 1982), p.125

⁸⁰ Penelope Pether, 'Hardy and the Law.' in *Thomas Hardy Journal* 7, 1991, pp. 28-41

⁸¹ *Ibid*, p.35

⁸² *Ibid*, p.34

land law, tort, equity, and criminal law, purports to protect women but actually privileges powerful men.’⁸³

Studies which address specific legal issues in Hardy’s novels frequently focus on his treatment of women’s legal status. The majority of critical studies on legal issues in Hardy’s novels concern the rape/seduction of Tess.⁸⁴ These studies consider *mens rea*, Hardy’s elided scene in which Alec drugs Tess, and the status of the Law concerning cases of rape. William A. Davis’s interest in Hardy’s role as a magistrate was first awakened through his reading the bowdlerized version of *Tess* (*Graphic*, 1891), which substituted a faked marriage in place of the rape scene and Tess’s mother’s response “But he can be prosecuted for this”; this led him to consider the contemporary legal implications of the bogus marriage.⁸⁵ Phillip Mallett and Steve McCarty illustrate how specific legal cases related to areas of ongoing contemporary legal reform are likely to have raised Hardy’s interest. Mallett points to Hardy’s interest in contemporary legal cases, citing the scandalous “Clitheroe Abduction Case” of 1891 as likely to have raised his interest as he completed *Tess of the d’Urbervilles* (1891) and influenced his exploration of the limits to conjugal rights in *Jude the Obscure* (1895).⁸⁶ Steve McCarty shows how Hardy engages with the ongoing debate over criminal insanity raised by the ‘McNaughten case’ (1873) and demonstrates its influence on the portrait of Boldwood in *Far from the Madding Crowd* (1874).⁸⁷ William A. Davis’s book-length study *Thomas Hardy and the Law*

⁸³ Penelope Pether, ‘Sex, Lies and Defamation: The Bush Lawyer of Wessex’ in *Cardozo Studies in Law and Literature*, 6(2), 1994, pp.171-201, 174

⁸⁴ Melanie Williams, “Sensitive as Gossamer” – Law and Sexual Encounter in *Tess of the d’Urbervilles*’ in *Thomas Hardy Journal* 17(1), 2001, pp.54-60; Ellen Rooney: ‘Tess and the Subject of Sexual Violence: Reading, Rape, Seduction’ in John Paul Riquelme, ed., *Tess of the d’Urbervilles: Complete, Authoritative Text with Biographical and Historical Contexts, Critical History and Essays from Five Contemporary Critical Perspectives* (Basingstoke: Macmillan, 1998), pp. 462-83; William A. Davis Jr., ‘The Rape of Tess: Hardy, English Law, and the Case for Sexual Assault’ in *Nineteenth-Century Literature* (52:2), 1997, pp.221-31; Ellen Rooney, “A Little More than Persuading”: Tess and the Subject of Sexual Violence’ in Lynn A. Higgins and Brenda R. Silver, ed., *Rape and Representation* (New York: Columbia University Press, 1991), pp.86-114.

⁸⁵ William A. Davis, Jr., ‘But He Can Be Prosecuted for This’: Legal and Sociological Backgrounds of the Mock Marriage in Hardy’s Serial Tess’ in *Colby Library Quarterly* 25(1), 1989, pp.28-41

⁸⁶ Phillip Mallett, “Smacked, and Brought to Her Senses”: Hardy and the Clitheroe Abduction Case’ in *Thomas Hardy Journal* 8(2), 1992, pp.70-73

⁸⁷ Steve McCarty, “That We Can Talk of Another Time”: Boldwood’s Madness and Victorian Law’ in *Thomas Hardy Journal* 21, 2005, pp.94-102

(2004) examines the influence of Hardy's interest in Law, his legal friendships and also his attendance at particular cases on his fiction.⁸⁸ Davis draws on many legislative developments particularly related to women's legal status and divorce and has shown the influence of these Acts on *Tess of the d'Urbervilles* and *Jude the Obscure*. Davis provides an invaluable biographical history of Hardy's interest in the Law and applies a study of contemporary legal reforms and specific trials to a study of Hardy's interest in the legal issues, particularly those concerned with marriage and sexual relationships.

Critical studies of legal issues in Hardy's novels have focused primarily on the legal position of women and specifically on the issues of rape and divorce. William A. Davis highlights how Hardy integrated the contemporary legal reform of divorce law in *The Woodlanders* (1887), *Tess of the d'Urbervilles* and *Jude the Obscure*. The present study is indebted to the recent publication of William Greenslade's edition of Hardy's 'Facts' notebook, which has presented the opportunity of seeing specifically what contemporary legal issues interested Hardy.⁸⁹ My discussion does not include analysis of *The Woodlanders*, which deals with divorce law, as this has been discussed extensively by Davis.⁹⁰ Other legal issues in Hardy's novels include intellectual property rights and copyright law, which has been considered at length by Clare Pettit⁹¹ and inheritance and property law. The present study seeks to relate Hardy's interest in legal reform to his developing conception of tragedy and therefore has addressed issues in which tragedy is a direct result of the operation of the Law and specifically engages with contemporary legal issues under debate. This study thus focuses on the influence of legal reforms such as the Prisoners' Counsel Act, (1836), the McNaughten Rules (1843) and the abolition of public execution (1868) on Hardy's fiction. I do not strictly focus on his tragic novels but seek to show Hardy's developing conception of tragedy and how it is related to legal issues.

⁸⁸ William A. Davis, *Thomas Hardy and the Law: Legal Presences in Hardy's Life and Fiction* (Newark; London: University of Delaware Press, Associated University Presses, 2003)

⁸⁹ William Greenslade, ed., *Thomas Hardy's 'Facts' Notebook: a Critical Edition* (Aldershot: Ashgate, 2003), 192[b], p.284

⁹⁰ Davis, *Thomas Hardy and the Law*, pp.128-38

⁹¹ Clare Pettit, *Patent Inventions: Intellectual Property and the Victorian Novel* (Oxford: Oxford University Press, 2004)

Thus I include *Desperate Remedies* (1871) and *Far from the Madding Crowd*, which engage with the legal issues of criminal insanity and capital punishment.

Hardy engaged with legal issues anachronistically in his fiction, long after reform had been carried out through a series of legislative Acts, namely the Reform Acts (1832, 1867, and 1884), the Poor Law (1834) and the Prisoners' Counsel Act (1836). This served to highlight the fact that toward the end of the nineteenth century, as Hardy wrote his tragic novels, many contemporary socio-economic and legal issues were still in need of reform. During his research of back editions of the *Dorset County Chronicle*, Hardy borrowed a number of issues from the 1830s, which he returned in 1917, noting, 'They must have been borrowed [...] from a former editor for reference to something or other connected with the First Reform Bill.'⁹² The social issues behind the First Reform Bill were still contemporary concerns as Hardy wrote his tragic novels from the 1870s to the 1890s as evidenced in his essay 'The Dorsetshire Labourer' (1883). In July 1883 *Fortnightly Review* carried an editorial written by T.H.S. Escott, 'The Future of the Radical Party.' It endorsed a speech made by Joseph Chamberlain in Birmingham on 13 June, urging landlords to 'provide better accommodation for the working classes in town and country.' Hardy read reports of that speech and a fortnight later wrote to John Morley that his description in 'The Dorsetshire Labourer' harmonizes with what was said at Birmingham.'⁹³ Hardy was aware from his contemporaries in the judiciary of the urgent need for certain legal reforms. Among Hardy's solicitor friends was Arthur Henry Lock who, Davis notes, was the author of a number of pamphlets addressing the issue of providing legal aid for the poor, who could not benefit from the reform of trial procedure if they could not afford legal counsel.⁹⁴ In *Rural England* (1906), H. Rider Haggard records an interview with Hardy in which he said of the conditions of the agricultural labourer, that 'down to 1850 or 1855 his condition was in general

⁹² Richard Little Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 5, 1914-1919 (Oxford: Clarendon Press, 1978), p.210

⁹³ Richard Little Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1, 1840-1892 (Oxford: Clarendon Press, 1978), p.119

⁹⁴ *Who was Who 1916-1928*, s.v. "Lock, His Honour Judge B. Fossett," cited by Davis in *Thomas Hardy and the Law*, p.37

one of great hardship.’⁹⁵ In this interview of 1902, Hardy states that the agricultural labourer’s life ‘is almost without exception one of comfort,’ but outlines other changes which are ‘not so attractive,’ namely the demographic changes which result from the specific legal issue of ‘insecurity of tenure.’⁹⁶ In this interview Hardy’s regret is over the loss of folk memory. However, in 1883 Hardy drew attention to the socio-economic and legal plight of the agricultural labourer in ‘The Dorsetshire Labourer.’ Although Hardy approvingly notes an increase in wages for labourers, he also notes ‘the Damocles’ sword of the poor’:

It must be remembered that melancholy among the rural poor arises primarily from a sense of incertitude and precariousness of their position. Like Burns’s field mouse, they are overawed and timorous lest those who can wrong them should be inclined to exercise their power.⁹⁷

Hardy’s tragic novels show the debilitating effect of laws relating to landholding rights in the depiction of the Lady Day migration in *Tess* (*TD*, pp.375-76) and the urgent need for reform of the divorce laws. While other eighteenth and nineteenth-century novelists such as Fielding and Dickens overtly depicted legal environments and practices for the purpose of reform via didactic realism, Hardy was less explicitly reformatory. Nonetheless Hardy’s role as a magistrate spanned his literary career and permeated his fiction so that he addressed legal issues not in the form of realism but through fiction as an imaginative forum for metaphorical legal argumentation. Through his novels, Hardy engaged with contemporary ideological debate around issues of legal reform, such as the legal representation of the marginalized poor and the definition of legal insanity.

Many critics, notably Roger Ebbatson, Lance St John Butler, and Ralph Pite, have noted Hardy’s conflicted political leanings, which are rooted in a liminal class

⁹⁵ H. Rider Haggard, *Rural England*, vol. 1 (Longmans, Green and Co., 1906), p.282

⁹⁶ *Ibid*, pp.283-4

⁹⁷ Thomas Hardy, ‘The Dorsetshire Labourer’ in Harold Orel, ed., *Thomas Hardy: Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.168-89, p.174

position. Of Hardy's immediate ancestry Rebecca West notes that he 'came half from the yeoman class and half from the labouring class.'⁹⁸ This conflict within Hardy permeates his autobiographical writing and correspondence in which he seeks to disguise his roots and emphasize his more distinguished social connections, as has long been recognized in critical writings on Hardy.⁹⁹ Robert Gittings notes that Hardy's genealogical table of his ancestry, which he drew up in old age, lays emphasis on remote connections on his mother's side, which included a number of professional men including an Assistant Commissioner of Metropolitan Police.¹⁰⁰ Hardy's desire to stress such connections is mirrored in his climbing the social ladder in his literary and magisterial careers. In 1892 Hardy records attending

an interesting legal dinner at Sir Francis Jeune's. They were all men of law but myself – mostly judges. Their stories, so old and boring to one another, were all new to me, and I was delighted.¹⁰¹

William A. Davis lists Hardy's eminent friends in legal circles as including Sir John Duke Coleridge, Lord Chief Justice of England, Sir Francis Jeune, President of the Probate Division of the High Court and Divorce Court Judge and Justices Sir Henry Hawkins and Sir Lewis William Cave.¹⁰² Hardy recollects that having written 'On the Western Circuit,' he sent it to Sir Francis Jeune to read, 'for fear [he] had gone wrong in the legal details.'¹⁰³ He recalls that he was glad to have made the suggested amendment and that years later, he discussed it with Justice Cave, who disagreed with the necessity for the correction.¹⁰⁴ The story, however, highlights that Hardy corresponded with legal experts to try to ensure factual accuracy with legal details in his fiction. Hardy also emphasized the support he received from Justice Francis Jeune and his wife throughout his literary career. In a letter of 1896 Hardy wrote:

⁹⁸ 'Rebecca West Proves a Beautitude' 108 (1931), p.18, quoted by G.W. Sherman in 'Thomas Hardy and the Agricultural Labourer,' *Nineteenth-Century Fiction* 7(2) 1952, pp. 111-118, p.111

⁹⁹ Robert Gittings, *Young Thomas Hardy* (London: Heinemann, 1975) pp.3, 8, 13, 59, 90-94, 121-2, 136, 158

¹⁰⁰ *Ibid*, p.3

¹⁰¹ F.E. Hardy, *The Life of Thomas Hardy*, p.265

¹⁰² Davis, *Thomas Hardy and the Law*, pp.30-31, 33, 37

¹⁰³ Collins, *Talks with Thomas Hardy at Max Gate*, pp.77-78

¹⁰⁴ *Ibid*, p.78

‘The Jeunes are surprised at the unfounded attacks on me that the volume is made the vehicle of,’¹⁰⁵ pitting the wisdom of an eminent legal historian against the injudicious critics of *Jude the Obscure*.

The social anecdotes that Hardy records in his autobiography reflect that he clearly sought to align himself with the more ‘interesting and better-informed class’ he describes in ‘The Dorsetshire Labourer.’¹⁰⁶ In doing so, he elides from his autobiography reference to those relatives and connections he deemed to be socially inferior. *The Hand of Ethelberta* (1876) may be seen as containing a certain autobiographical connection, being the story of an aspiring writer who seeks social status through a well-connected marriage. Likewise, despite Hardy’s denial of autobiographical resemblance to Stephen Smith in *A Pair of Blue Eyes* (1873),¹⁰⁷ the plot reads as a striking echo of Hardy’s desire to renounce ‘poor relatives’ and to create an image of himself resembling the more well-connected and educated Henry Knight, man of letters and, notably, a barrister-at-law. Hardy’s legal aspirations are notable particularly given some of his family connections, who featured in the local newspaper for brawling. In Hardy’s ‘Facts’ Notebook he records an altercation between bands of mummers, which included his Uncle John.¹⁰⁸ Charlotte Lindgren notes that ‘although his name is fully given in the newspaper accounts, Hardy always copies it simply as J- or H-.’¹⁰⁹ Gittings notes that an elided name from his autobiography, Hardy’s Uncle John, was ‘an example, very near at hand, of poverty and perhaps despairing emigration in Hardy’s own immediate family.’¹¹⁰ Claire Tomalin emphasizes the significance of Hardy’s mother receiving Poor Law assistance as a pauper child.¹¹¹ At the time of her marriage to Thomas Hardy senior, she had been about to take employment in London as a cook in a London

¹⁰⁵ Richard L. Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 2, 1893-1901 (Oxford: Clarendon Press, 1980), p.137

¹⁰⁶ Hardy, ‘The Dorsetshire Labourer,’ p.188

¹⁰⁷ Collins, *Talks with Thomas Hardy at Max Gate*, pp.74-5

¹⁰⁸ Greenslade, ed., *Thomas Hardy’s ‘Facts’ Notebook*, 79b, 81b, pp.121, 124

¹⁰⁹ Lindgren, ‘Thomas Hardy: Grim Facts and Local Lore,’ p.21

¹¹⁰ Gittings, *Young Thomas Hardy*, p.13

¹¹¹ Claire Tomalin, *Thomas Hardy: a Time-Torn Man* (London: Penguin, 2006), p.6

clubhouse.¹¹² Hardy's sensitivity to the plight of the labouring class, reflected in his recollections, illustrates his divided loyalties which resulted in conflicted political views. Lance St John Butler asserts that 'Hardy had always had a streak of radicalism,'¹¹³ while Pite notes that 'Hardy's mixture of conservative and progressive feeling is full of contradictions, making him easy to criticize as a traitor to his youthful principles or as a reactionary in old age.'¹¹⁴ Drawing on these studies of a 'conflicted' Hardy, this thesis focuses on the division between his legal role as a magistrate and his authorial role in which he betrayed sympathy for agricultural labourers who were driven to crime through poverty.

Although I stress that Hardy emphasizes his more illustrious social connections, including his eminent legal friends, his narratives are ultimately a sympathetic representation of the politically and legally marginalized agricultural poor.

My thesis opens by arguing that as Hardy committed to the tragic mode in his fiction he chose to set his early tragic novels, *The Return of the Native* and *The Mayor of Casterbridge*, at a time immediately subsequent to the Reform Act of 1832, the time of agricultural labourers' revolt. In 1895 Hardy wrote new prefaces for his novels in which he specified the time settings and locations of his novels to allude to a context of rural insurrection in Dorsetshire as the backdrop of his novels. In Chapter One I examine the significance of November Fifth in the 1840s, which was adopted by disaffected rural labourers who engaged in seasonal campaigns involving arson, machine-breaking and rioting. In this chapter I also consider the specific legal and social context of *The Mayor of Casterbridge*, which is set at the time preceding the Repeal of the Corn Laws, a time of political demonstrations and rioting carried out by the Anti-Corn Law League. I argue that although Hardy did not wish to take an overt political stance in his fiction, his narratives reflect his sympathy for the rural poor, often driven to crime through poverty. Hardy's depiction of the agricultural poor was derived from contemporary sociological studies of rural poverty. While

¹¹² *Ibid*, p.9

¹¹³ Lance St John Butler, 'Stability and Subversion: Thomas Hardy's Voices, in Charles P.C. Pettit, ed., *Celebrating Thomas Hardy* (London: Macmillan, 1996), pp.39-53, p.44

¹¹⁴ Ralph Pite, *Thomas Hardy: The Guarded Life* (London: Picador, 2006), p.436

sympathy is rendered through the overarching omniscient narrator, these novels also give voice to the rural poor, which are further explored in a Bakhtinian reading in Chapter Two.

While Bakhtinian readings of Hardy's novels have stressed how the carnivalesque representation of the voice of the workfolk undermines the sanctity of the Church and bourgeois marriage,¹¹⁵ I argue that this spirit is more integrally bound up with the Law and is used to undermine the prevailing hegemonic structure. In the context of the nineteenth century, this carnivalesque spirit may be seen as a reaction against the punitive extremes of the Bloody Code, legal officialdom (including the marriage laws) and the social hierarchy. In *The Return of the Native* and *The Mayor of Casterbridge*, Hardy sets official justice against popular community justice, which is expressed in the form of effigy-burning and skimmington-riding. Conventional social rules are depicted as an alternative form of 'Law' and community values are expressed and enforced through 'popular justice' in these early novels. Both community justice and official justice are ritualistic and equally morally conservative. I argue that Hardy's sympathy lies with the victims of popular justice and that the depiction of harsh 'popular justice' law shows up the inherent cruelty of official law. In this Chapter I also consider the structural principle of reversal in the form of popular justice as part of a ritual of social leveling. Carnival and tragedy are both structured around the principle of reversal. The courtroom scene is a key scene of reversal in *The Mayor of Casterbridge*; it is both a carnivalesque attack on Henchard and the beginning of his tragic fall. Mrs Goodenough's role is central to the Bakhtinian reversal within the trial scene whereby 'governors turn into subjects, victims turn into criminals, and criminals turn into executioners.'¹¹⁶ A narrative corollary to Henchard's fall is his increasing association with criminal locations and unwitting criminal behaviour. I contend that Hardy depicts Henchard's fall in this

¹¹⁵ George Wotton, *Thomas Hardy: Towards a Materialist Criticism* (Totowa: Barnes and Noble; Gill and MacMillan, 1985), p.60-73; Roger Ebbatson, *Hardy: the Margin of the Unexpressed* (Sheffield: Sheffield Academic Press, 1993), pp.140-41; Ronald Knowles, 'Carnival and Tragedy in Thomas Hardy's Novels,' in *Thomas Hardy Journal* 21, 2005, pp.109-124

¹¹⁶ Bruce Thomas Boehrer, 'Epicoene, Charivari, Skimmington,' in *English Studies: A Journal of English Language and Literature*, 75(1), 1994, pp.17-33, p.23

way to displace contemporary clear-cut notions of criminality being the preserve of the poor and to reveal the easy transition from middle class status to social degradation and criminality.

I argue that beneath the carnivalesque humour of Hardy's lampooning of the constabulary and the courtroom in *The Mayor of Casterbridge* lies a more direct serious revelation about trial procedure, which I explore in detail in Chapter Three. Although I acknowledge that comedy can operate as an innocent form of release from seriousness, I consider the parody to speak to a greater purpose in showing the failure of trial procedure to accurately represent the accused. The first half of the nineteenth century was an era of great transition in court proceedings. A central development of the 1836 Prisoners' Counsel Act was the permission of counsel to represent and speak on behalf of the altercating parties. However, the courtroom scene in *The Mayor of Casterbridge* is conducted as a pre-defence trial between victim and accused. Prior to the Prisoners' Counsel Act, the outcome of a trial was dependant on the performance of the accused in the witness-box. Steven Connor compares the role of theatre and performance to that of court, stating that 'whereas in the theatre a script is turned into a performance, in the courtroom, a performance is turned into a script.'¹¹⁷ The suggestion of the novel's affinity with the textual representation of a trial is suggestive, but perhaps overemphasizes the significance of the written word in trial and underplays the role of performance. I argue that the emphasis on performative ability in the forum of the trial disadvantages those who are not well-versed in legal discourse and gives undue advantage to those such as Mrs Goodenough, who can manipulate trial procedure to their advantage. I furthermore argue that Hardy indirectly critiques trial procedure by taking the concept of private discipline into the realm of the domestic. 'Court proceedings' are metaphorically represented by a witness-box style interrogation in the familial environment. A 'domestic trial scene' stands figuratively for real trial procedure in which Hardy can discuss legal reform in a fictional and non-legal domain. The

¹¹⁷ Steven Connor, 'Transcripts, Law, Literature and the Trial of the Voice,' in *New Formations*, 32, 1997

metaphorical domestic trial scene exposes the shortcomings of the court in providing a just environment for the presentation of the accused's narrative. Following Hilary Schor,¹¹⁸ I contend that Hardy's narratives provide a semi-omniscient realist representation that supplies an alternative judgement of character. Through this alternative representation, Hardy thus shows up the limitation of trial procedure, dependent on witnesses' narratives and also points to the need for full legal representation for the accused who, in Hardy's novels, fails to provide adequate self-defence.

In Chapter Four, I further examine how characters who have been socially constructed as criminal represent themselves in Hardy's novels. In *Imagining the Penitentiary*, Alexander Welsh analyzes the relationship between the development of the realist novel and the concurrent emergence of the 'penitentiary idea.' Barbara Harlow argues that

Bender's own textual and new literary historical reconstructions of the 'penitentiary idea' as it developed in the eighteenth century would seem [...] to subscribe to penal practice itself, leaving little recourse to the counter-narratives of the incarcerated.¹¹⁹

Bender's study, through its emphasis on the power of penal practices, ignores the discourse of the counter-narrative. Sean Grass redresses this deficit by analyzing how the prison

by evolving during the nineteenth century as a private space explicitly designed to wield psychological and narrative power over those it confined – provided both the impetus and the model for increasingly interior fictions of the psychological self.¹²⁰

¹¹⁸ Schor, 'Show-Trials: Character, Conviction and the Law in Victorian Fiction'

¹¹⁹ Barbara Harlow, 'Re-Imagining the Penitentiary' in *Novel: A Forum on Fiction*, 23(2), 1990, pp. 209-211, p.210

¹²⁰ Sean Grass, *The Self in the Cell: Narrating the Victorian Prisoner*, (New York; London: Routledge, 2003), p.8

In Chapter Four, I argue that Manston's 'Last Words' in *Desperate Remedies* draws on the representation of the criminal in broadside ballads as the narrative attempts to redress the deficit in defence that I have outlined in Chapter Three. I contend that Hardy's use of the broadside convention of the 'Last Words' serves to defend Manston on the grounds of temporary insanity. This use of insanity as defence in *Desperate Remedies* is a plot line that Hardy fully developed in *Far from the Madding Crowd*. I contend that Hardy also considered the possibility of presenting Tess as insane, but ultimately that this is undermined by Tess's own narrative 'confession' of her murder of Alec. Drawing on Shumaker's study of the tradition of 'confession' novels,¹²¹ I concur with Shumaker that *Tess of the d'Urbervilles* breaks with the conventional narrative representation of the penitent fallen women, but furthermore I argue that the representation of Tess is in the tradition of broadside ballad murderess narratives, which rendered the murderess heroic rather than deviant. Hardy's narrator thus fulfils the role of providing a defence testimony, giving a 'truer' representation of Tess than can be attained from the various interpretations of her within the text, including her own self-representation.

In Chapter Five I argue that Hardy's tragic characters experience and internalize, or rebel against, a destructive social surveillance, which redirects the reader's criticism back onto the original source of surveillance. Cates Baldridge (1993) and Sara Malton (2000) examine how methods of social control permeate *The Woodlanders* and *The Return of the Native* respectively, creating Foucauldian environments of surveillance.¹²² These studies inform my reading of Hardy's novels in Chapter Five, in which I demonstrate how Hardy's Wessex landscapes are imbued with imagery of criminal punishment and are experienced as such by Hardy's tragic characters. The counter-narratives described in Chapter Four are ultimately subsumed within the overarching structural principles of tragedy which must end in the death of the tragic

¹²¹ Jeanette Shumaker, 'Breaking with the Conventions: Victorian Confession Novels and *Tess of the d'Urbervilles*' in *English Literature in Transition* 37(4), 1994, pp.445-62, p.447

¹²² Cates Baldridge, 'Observation and Domination in Hardy's *The Woodlanders*' in John Maynard and Adrienne Auslander Munich, ed., *Victorian Literature and Culture*, vol. 21, (New York: AMS Press, 1993), pp.191-209; Sara A. Malton, "'The Woman Shall Bear Her Iniquity': Death as Social Discipline in Thomas Hardy's *The Return of the Native*' in *Studies in the Novel* 32(2), 2000, pp.147-64

hero. The means by which the psychological progression toward self-destruction is presented is through the tragic character's relationship with his or her environment. Hardy's tragic protagonists are set in contrast with the pastoral characters as they read their environment through imagery of criminal punishment. This reflects both the encroachment of the rural landscape with the prison and the courtroom and also a psychological and philosophical shift over the course of the eighteenth and nineteenth centuries to viewing the world as a penitentiary, as suggested by Schopenhauer. Legal issues which operate as a restrictive force against the free will of his protagonists in a fictional metaphorical domain is that which creates the tragic conflict in his novels between man and his environment. The inevitability of the destruction of the tragic hero and the sense of loss occasioned by his or her death lends a reformatory spirit to Hardy's narratives by seeking to interrogate the nature of the forces of destruction which, either legal or social, are depicted in Hardy's tragic fiction, as 'Law.'

THE FIGURATIVE LANDSCAPES OF VICTORIAN WESSEX

In 1895, Hardy wrote new Prefaces for the Osgood McIlvaine editions of his novels in which he was much more specific than formerly about the locations and time settings of his novels. Hardy maintained that his novels were 'a fairly true record of a vanishing way of life.'¹ Carl Weber notes that Hardy 'surveyed the entire nineteenth century with a view to making his historical study as accurate as were his topographical observations.'² Critics have long recognized the integral significance of place in Hardy's fiction, but studies of temporality have often been considered separately from those that focus on landscape. Hardy's adoption of this Anglo-Saxon territorial definition of 'Wessex' has the dual function of providing a confined regional space that functioned as a synecdoche of England and also giving a layered sense of history to his novels. This chapter will consider how Hardy uses landscape not as a universal, 'cosmic' backdrop, but with allusive reference to specific historical events, such as the French Revolution, the Repeal of the Corn Laws and mid-century rural insurrection which followed as a result of the immense socio-economic changes to the lives of rural labourers. Suzanne Keen argues that geographical spaces 'allow for consideration of contemporary issues in the Victorian novel,' such as 'Irish Famine; Chartism; enfranchisement; the Corn Law Repeal effort; the Woman question; Darwinism and the Condition of England.'³ Hardy's thematic concerns regarding local social and legal issues are depicted through the landscapes of the tragic novels, which represent specific times and places and feature pervasive allusion to social unrest, crime and capital punishment. Hardy's allusions and depictions of crime in society in his tragic novels provide a sympathetic portrait of the rural labouring class driven to crime as a result of poverty.

When *The Return of the Native* first appeared in 1878, Hardy did not specify the time setting more than to locate the action around a specific calendrical date, placing the main

¹ Thomas Hardy, 'The General Preface to the Wessex Edition' in Harold Orel, ed., *Thomas Hardy's Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.44-50, p.46

² Carl Weber, 'Chronology in Hardy's Novels' in *Publications of the Modern Language Association*, 53(1) 1938, pp.314-20, p.320

³ Suzanne Keen, *Victorian Renovations of the Novel: Narrative Annexes and the Boundaries of Representation* (Cambridge: Cambridge University Press, 1998), p.15

action of the novel (excepting Book VI, 'Aftercourses') over the course of a year and a day from November 5th to November 6th of the following year. In the opening scene of the novel, the rural labourers of Egdon are gathered around a bonfire in the centre of the heath. The narrator's description of the seasonal celebration of November Fifth on Egdon points away from its traditional political resonance, de-specifying the time setting, seemingly in the interests of universality. Thus the description aligns the present time with 'past ages' and reflects on the universal and timeless quality of man's 'Promethean' nature:

It was as if these men and boys had suddenly dived into past ages, and fetched therefrom an hour and deed which had before been familiar with this spot. The ashes of the original British pyre which blazed from that summit lay fresh and undisturbed in the barrow beneath their tread. The flames from funeral piles long ago kindled there had shone down upon the lowlands as these were shining now. Festival fires to Thor and Woden had followed on the same ground and duly had their day. Indeed, it is pretty well known that such blazes as this the heathmen were now enjoying are rather the lineal descendants from jumbled Druidical rites and Saxon ceremonies than the invention of popular feeling about Gunpowder Plot.

Moreover to light a fire is the instinctive and resistant act of man when, at the winter ingress, the curfew is sounded throughout Nature. It indicates a spontaneous, Promethean rebelliousness against that fiat that this recurrent season shall bring foul times, cold darkness, misery and death. Black chaos comes, and the fettered gods of the earth say, Let there be light (*RN*, pp. 44-5).

Manuscript evidence suggests that Hardy gave considerable thought to this description of the history of November Fifth bonfires. The first paragraph in the manuscript underwent significant emendation and the second paragraph was a later inserted addition on the back of folio 14, the previous manuscript page.⁴ Perhaps the most significant amendment to the manuscript passage is the substitution of the word 'invention' where the manuscript

⁴ For details of Hardy's revisions see Simon Gatrell, ed., *The Return of the Native: a Facsimile of the Manuscript with Related Materials* (London; New York: Garland, 1986), p.19

originally read ‘mere result.’⁵ This suggests that Hardy wished to emphasize that the original observance of a fire festival was appropriated to serve contemporary cultural needs. The narrator’s observance that the original motivation for fire-making was ‘Promethean rebellion’ raises the question as to what specifically is the cause for rebellion. A study of the contemporary observance of the November Fifth ritual suggests that through allusion to Promethean rebellion, Hardy is commenting on the present time in his novel, that is, the 1840s.

In 1895, when Hardy added a new Preface to *The Return of the Native*, he stated: ‘The date at which the following events are assumed to have occurred may be set down as between 1840 and 1850.’ Carl Weber has shown that it is likely that Hardy closely followed a calendar for 1842 but has not explored the social context of the novel’s action in light of this specific time setting.⁶ In 1842, the second Chartist petition was presented to the House of Commons, voicing the complaints of over three million petitioners regarding parliamentary election and representation, the Poor Law, church taxes and an unconstitutional police force.⁷ The second petition, like the first of 1839, was rejected and subsequently throughout the 1840s, working class discontent was manifested in violence. This unrest threatened to escalate along the lines of the French Revolution, the influence of which engendered the movement. Thomas Carlyle expressed the political spirit of the decade among the working classes:

A feeling very generally exists that the condition and disposition of the Working Classes is a rather ominous matter at present; that something ought to be said, something ought to be done, in regard to it. And surely, at an epoch of history when the ‘National Petition’ carts itself in wagons along the streets, and is presented ‘bound with iron hoops, four men bearing it’ to a Reformed House of Commons; and Chartism numbered by the million and half, taking nothing by its iron-hooped Petition, breaks out into brickbats, cheap pikes, and even into sputterings of conflagration, such very general feeling cannot be

⁵ *Ibid*, p.19

⁶ Carl Weber, ‘Chronology in Hardy’s *Return of the Native*’ in *Publications of the Modern Language Association of America*, 54(2), 1939, pp.618-20

⁷ S.G. & E.O.A. Checkland, ed., *The Poor Law Report of 1834* (Harmondsworth: Penguin, 1973)

considered unnatural! To us individually this matter appears, and has for many years appeared, to be the most ominous of all practical matters whatever; a matter in regard to which if something be not done, something will do itself one day, and in a fashion that will please nobody. The time is verily come for acting in it; how much more for consultation about acting in it, for speech and articulate inquiry about it!⁸

Hardy's choice of the 1840s as the time setting of *The Return of the Native* should be seen as a cultural reference to social unrest in England in the political aftermath of the French Revolution. In the novel, dialogue is frequently employed to suggest a historical context for the action, thus locating it at a time of political anxiety and unrest. Hardy's paternal grandfather had been one of the volunteer militia of Puddletown's third battalion, who guarded the Dorset coast against an expected invasion by Napoleon. The false alarm of 1804 that the French were about to land in Portland is recalled in *The Return of the Native* through Granfer Cattle's recollection of serving in the 'Bang-Up locals,' the local Infantry Volunteers who had been recruited to assist in defence of the county against French invasion. Granfer Cattle's recollection of 'the day [they] ran out o' Budmouth because it was thoughted that Boney had landed round the point' (*RN*, p.158), refers to 1st of May 1804 when Hardy's grandfather's battalion had marched to Weymouth to defend the coast.⁹ In conversation with the furze-cutters as they discuss the return of Clym from Paris (which notably, was changed from Budmouth), Captain Vye relates his experiences in the navy:

"The place he's been living is at Paris" said Humphrey, "and they tell me 'tis where the king's head was cut off years ago. My poor mother used to tell me about that business. "Hummy," she used to say, "I was a young maid then, and as I was at home ironing mother's caps one afternoon the parson came in and said, "They've cut the king's head off, Jane, and what 'twill be next God knows.'"" "A good many of us knew as well as He before long," said the captain chuckling. 'I lived seven years under water on

⁸ Thomas Carlyle, 'Chartism' in *English and Other Critical Essays* (London: J.M. Dent and Sons, 1964), p.165

⁹ George Lanning, 'Thomas Hardy and the Bang-up Locals' in *Thomas Hardy Journal* 16(2), 2000, pp.54-58, p.54

account of it in my boyhood — in that damned surgery of the Triumph, seeing men brought down to the cockpit with their legs and arms blown to Jericho” (*RN*, p.128).¹⁰

This opening scene at the November Fifth bonfire celebration suggests a political backdrop through which to read the subsequent return of the native from Paris. The image of the bonfire serves as an elemental force that has resonance beyond its associations with the Gunpowder Plot with the allusion to Promethean rebellion suggestive of its potential significance in relation to contemporary social and cultural issues.

The Return of the Native can be read in the light of the recent research carried out on the relationship between agricultural unrest under the various local and contemporary guises of Luddism, Chartism and Captain Swing riots and the social unrest in England, which came in the aftermath of the French Revolution and the Napoleonic wars.¹¹ Robert Storch links the adoption of November Fifth by the working and middle classes to the social unrest that followed the Napoleonic wars, which was associated with popular radicalism in the south of England.¹² He demonstrates that as November Fifth became associated with radicalism, the upper classes withdrew their support of the annual celebrations. The holiday was adopted by the working classes who created ‘bonfire societies’ in rural towns and the occasion became one of violence and disorder. The mid-century November Fifth demonstrations were labourers’ protests against capitalist values and the introduction of threshing machines, through machine-breaking and frequently, rick-burning. Dorchester,

¹⁰ This dialogue echoes Hardy’s ghost-written autobiography in which he recollects hearing his grandmother speak of the French Revolution: ‘My mother says that my [paternal] grandmother told her she was ironing her best muslin gown [...] when news came that the Queen of France was beheaded. She put down her iron, and stood still, the event so greatly affecting her mind. She remembered the pattern of the gown so well that she would recognize it in a moment.’ Hardy himself said that one hot and thundery summer in his childhood she remarked to him: “It was like this in the French Revolution, I remember” (F.E. Hardy, *The Life of Thomas Hardy*, p.224).

¹¹ Robert Gifford, ‘Guy Fawkes: Who Celebrated What? A Closer look at 5th November in the light of Captain Swing,’ in Theresa Buckland and Juliette Wood, ed., *Aspects of British Calendar Customs* (Sheffield: Sheffield Academic Press, 1993), pp.147-53; E.J. Hobsbawm and George Rudé, *Captain Swing* (London: Lawrence and Wishart, 1969)

¹² Robert Storch, ‘“Please to Remember the Fifth of November”: Conflict, Solidarity and Public Order in Southern England 1815-1900’ in Robert Storch, ed., *Popular Culture and Custom in Nineteenth Century England* (London: Croom Helm, 1982), pp.71-99

it seems, was particularly afflicted by seasonal violence.¹³ A number of contemporary newspaper articles relate stories of hangings for arson, rick-burning, and rioting specifying the context of November Fifth celebrations.¹⁴ Hardy noted in his 'Facts' *Notebook* extracts from the *Dorset County Chronicle*, from 1830:

Incendiarism — ricks — farm-buildings &c — Vigilant watch kept on most farms — scarcely a farmer employing a machine to whom a notice has not been sent — several farmers have removed their threshing machines.¹⁵ (18th November)

Incendiarism at its climax — corn ricks & machines destroyed — special constables sworn. At Salisbury the yeomanry were called out — Rewards of £200 on the conviction of any incendiary — 60 rioters taken at Basingstoke. (25th November)¹⁶

Some incendiaries killed by military firing on them: sentences from one month to transp for life. (2nd December)¹⁷

The *Dorset County Chronicle* makes explicit that these riots, all in the wake of November Fifth, were directly related to the peasant rioters' demands for 'a considerable reduction of tithes.'¹⁸ In his 'Facts' notebook, following his excerpt from a report on November Fifth disturbances, Hardy adds 'Many labourers out of employ — distress great.'¹⁹

¹³ Hobsbawm and Rudé, *Captain Swing*, p.304

¹⁴ Notable examples can be found in following articles in *The Times*: 'Western Circuit. Dorchester, Monday, March 16,' *The Times* 18 Mar. 1846, sec. B: 8 March; 'Bedford, Wednesday, March 10,' *The Times* 12 Mar. 1830, sec. C: 4; 'Disturbances At Lewes,' *The Times* 27 Nov. 1847, sec. E: 8; 'Crown Court,' *The Times* 29 Feb. 1848, sec. F: 8; 'Another Fire At Gravesend,' *The Times* 23 Sept. 1850, sec. C: 3; 'The Fifth of November,' *The Times* 6 Nov. 1850, sec. E: 6; 'The Fifth of November,' *The Times* 9 Nov. 1850, sec. F: 5; 'Western Circuit. Winchester, March 3,' *The Times* 6 Mar. 1869, sec. E: 4

¹⁵ William Greenslade, ed., *Thomas Hardy's 'Facts' Notebook: a critical edition* (Aldershot: Ashgate, 2003), 192[b], p.284

¹⁶ *Ibid*, 192[d], p.285

¹⁷ *Ibid*, 192[f], p.285

¹⁸ Greenslade, ed., *Thomas Hardy's 'Facts' Notebook*, p.286. Greenslade notes that 'reports of riots in the region were so numerous that, for once, DCC ran a 'Second Edition', with 'latest intelligence' (p.4, col.3) as it stood at 10 o'clock on Thursday morning – the day of publication.'

¹⁹ *Ibid*, 193[c], p.287

Embittered factions of the rural community channelled their resentment into a sustained campaign of violence. The authorities reacted by amending the law and increasing the presence of special constables to implement it. In 1812, the outbreaks of Luddite machine-breaking provoked a capital statute and, although the penalty of death for the new offence was lifted two years later, it was re-imposed in 1817 after further disturbances.²⁰ Before the advent of the police, it was the duty of magistrates to call on the soldiers to quell disturbances.²¹ James Frampton, the Dorchester magistrate who arrested the Tolpuddle Martyrs, held an active role in the suppression of violence in Dorchester in the 1830s, which is recorded by his sister in *The Journal of Mary Frampton*.²² Hardy read and used *The Journal* as a source for his fiction.²³ Frampton's journal account, which includes the role of her brother in subduing insurrectionists, likely downplays the level of violence and emphasizes the success of the authorities. She writes:

The town of Dorchester was well patrolled [*sic*]. No rising took place there or at Fordington; on the contrary, the latter were most active in extinguishing a fire at a place a mile distant where, however, two ricks of corn were burnt. A troop of lancers arrived at Dorchester about this time, December 12th, and were joyfully received. Most of the thrashing [*sic*] machines in this neighbourhood were, however, either laid aside or destroyed by the farmers themselves. And no rising occurred near Dorchester. The troop of lancers looked worn down by the fatigues of the riots in Wiltshire, but were immediately called upon to guard old Mrs. Williams's house at Castle Hill, upon which an attack had been threatened. This troop was soon relieved by three troops of 3rd Dragoon Guards, who were placed permanently in the barracks at Dorchester. About seventy prisoners were at different times committed to gaol, and mobs and tumults became again rare occurrences. But, alas! the fires still continued at intervals. And no clue in this

²⁰ W. R. Cornish, Jennifer Hart, A. H. Manchester, and J. Stevenson, *Crime and Law in Nineteenth-Century Britain* (Dublin: Irish University Press, 1978), p.14

²¹ Terry Hearing, *Dorset Justice* (Poole: Magistrates' Association - Dorset Branch, 1999), p.92

²² Harriot Georgiana Mundy, ed., *The Journal of Mary Frampton from the Year 1779, until the year 1846, including various interesting and curious letters, anecdotes, &c., relating to events which occurred during that period* (London: Sampson Low, Marston, Searle and Rivington, 1885)

²³ Richard L. Purdy, 'A Source for Hardy's "Committee-Man of the Terror" in *Modern Language Note*: 58(7), 1943, pp.554-555

county any more than in others could be found by which to detect the perpetrators.²⁴

The written correspondence that Frampton includes interspersed with her journal account further attests to the level of violence, which notably peaked around November Fifth.²⁵

Robert Storch traces the adoption of November Fifth in the early nineteenth century by groups of radicals to express their discontent at their socio-economic position.²⁶ This was chiefly expressed through arson, breaking threshing machines and general anarchic violence on the streets of rural towns, including squib-throwing and tar-barrel rolling. Hardy used one such incident in his fiction: in Dorchester, on March 18th 1846, *The Times* reported that James Hart was indicted for ‘maliciously setting on fire a certain stack of furze, the property of David Slade, at Lytchett Minster’:

When the prisoner was in custody, he said it was no use to deny it — he had done it, and Swaffield had persuaded him. The prisoner had always borne the character of being a quiet hardworking lad, 18 years of age. For the prisoner, it was urged that it was a mischievous frolic, for the purpose of making a bonfire on the 5th of November. The jury found the prisoner Guilty. Sentence — three months’ imprisonment.²⁷

This incident, or another like it, is likely to have influenced Hardy’s reference in ‘The Withered Arm’ to the execution of an eighteen-year-old youth for an arson offence:

“If ever a young fellow deserved to be let off, this one does; only just turned eighteen, and only present by chance when the rick was fired. Howsomever, there’s not much risk of that, as they are obliged to make an example of him, there

²⁴ Mundy ed., *The Journal of Mary Frampton*, p.365

²⁵ Letter from Harriot G. Mundy to Lady H. Frampton, October 8th 1831, in Mundy ed., *The Journal of Mary Frampton*, pp.386-7

²⁶ Storch, ‘Please to Remember the Fifth of November,’ pp.71-99

²⁷ ‘Western Circuit. Dorchester, Monday, March 16,’ *The Times* 18 Mar. 1846, sec. B: 8

having been so much destruction of property that way lately.”²⁸

The sympathetic hangman echoes Hardy’s own sentiments. Even had he not witnessed such riots himself, in an interview with Norman Flower, Hardy related a story told to him by his father²⁹:

“I have seen some awful things, but what impressed me more than all else is something my father once told me. My father saw four men hung for being with some others who had set fire to a rick. Among them was a stripling of a boy of eighteen. Skinny. Half-starved. So frail, so underfed, that they had to put weights on his feet to break his neck. He had not fired the rick. But with a youth’s excitement he had rushed to the scene to see the blaze [...]. Nothing my father ever said to me drove the tragedy of Life so deeply into my mind.”³⁰

The impact of the story on Hardy’s imagination led him to consider it the single most emphatic example of ‘the tragedy of Life,’ remembered in conversation late in life.

Robert Storch writes of the types and locations of demonstrations that took place yearly on November Fifth, and when alluding to the ‘small rural gatherings round the fire,’ he references the opening of *The Return of the Native* as an example.³¹ While Hardy does not use the celebration to depict insurrection, in the manuscript of the novel, the following conversation of the furze-cutters before lighting their bonfires illustrates the contemporary belief in immunity from the Law on November Fifth:

“‘Twas a long way to bring’em,’ said one of these latter when a joined the rest on the summit. ‘I’d as soon have cut some here.’”

²⁸ Thomas Hardy, ‘The Withered Arm’ in Frank B. Pinion, ed., *Wessex Tales and A Group of Noble Dames* (London: Macmillan, 1977), pp.56-81, p.77

²⁹ Michael Millgate, *Thomas Hardy: His Career as a Novelist* (London: Macmillan, 1994), p.267

³⁰ James Gibson, ed., *Thomas Hardy: Interviews and Recollections* (Basingstoke: Macmillan, 1999), pp.175-76

³¹ Storch, ‘Please to Remember the Fifth of November,’ p.74

“Yes. ‘tis best not to steal your faggots where you light your fire.”

“But we all know that thieving o’ fuel is no harm on the fifth of November, & you go to heaven just the same.”

“So you do. ‘Tis no harm when you’ve gone to your last world, but it might be awkward while we live at home here. All the parishes used to be let cut furze & turf anywhere about, but they’ve took the right to it away from us now. However, to-night we’ll have our own.”³²

The furze-cutters’ belief that stealing faggots on November Fifth was overlooked reflects a widespread faith in immunity from the Law among the labouring classes on that date throughout England. Storch notes, for example, ‘In Durham, it was thought, nobody could be hanged on the Fifth; Lincolnshire farmers believed that on the Fifth they could shoot in the landowners’ preserves, immune from all processes of law.’³³ Hardy, however, while noting the trend, emphasizes the economic need that drives the furze-cutters to steal, such as he remembered from his father’s story of the eighteen-year-old who was hanged for rick-burning. The reference to stealing fuel in *Return of the Native*’s manuscript reflects the changed law regarding gleaning fuel from landowners, which had formerly been overlooked, seen as the age-old customary right of the poor. The criminalization of this offence led to several cases being brought before magistrates,³⁴ highlighting that the Law protected the rights of the landowning class but was overly harsh on the rural poor, a complaint that was raised in the Chartist petition.

Simon Trezise points to the time setting of *The Return of the Native* as signalling a connection to the Chartist movement of the 1840s and 1850s.³⁵ As noted by Trezise: ‘Clym is the only character whose links with Paris are not fatal and he has rejected it for life on Egdon.’³⁶ Roberto Dainotto argues that for Clym, “‘the country’” offer[s] a merry topos sheltered — because of its very closeness to nature and its laws — from Jacobean

³² Gatrell, *The Return of the Native: a Facsimile of the Manuscript*, p.15

³³ Storch, ‘Please to Remember the Fifth of November,’ p.73

³⁴ David Underdown, *Fire from Heaven: Life in an English Town in the Seventeenth Century* (London: Pimlico, 2003), p.120

³⁵ Simon Trezise, ‘Ways of Learning in *The Return of the Native*’ in *The Thomas Hardy Journal* 7(2), 1991, pp.56-65

³⁶ *Ibid*, p.64

violence.’³⁷ However, as Hardy was aware, clearly the country offered no such rural retreat. Furthermore, Clym is not distanced from the issues of rural rebellion; he claims to Eustacia, “Now, don’t you suppose, my inexperienced girl, that I cannot rebel, in high Promethean fashion, against the gods and fate as well as you. I have felt more steam and smoke of that sort than you have ever heard of” (*RN*, p.265). Yet in what does Clym’s Promethean rebellion consist? The description of Clym’s educational project suggests that he wishes to raise the living conditions of the labouring class:

Yeobright loved his kind. He had a conviction that the want of most men was knowledge of a sort which brings wisdom rather than affluence. He wished to raise the class at the expense of individuals rather than individuals at the expense of the class. What was more, he was ready at once to be the first unit sacrificed (*RN*, p.190).

In Joseph Arch, who stressed the value of education for the labouring class, Hardy may have found a model for Clym Yeobright. In ‘The Dorsetshire Labourer,’ Hardy lauds the efforts of Arch, founder of the First Agricultural Labourers’ Union who advocated on behalf of rural labourers who were suffering from ‘oppression and hunger and misery.’³⁸ Hardy heard Arch speak at Fordington Green in 1873, where Arch denounced the low level of labourers’ wages.³⁹ In a letter to H. Rider Haggard, Hardy notes with approval, ‘the result of the agitation [...] upon the income of the labourers’⁴⁰ and the consequent improvement in the living conditions.⁴¹ Arch was unique in his advocacy of non-radical means of changing working conditions. Noting the presence of the police Arch observed:

They thought there would be a disturbance, but they need not have troubled themselves on that score. I have always preached restraint and advocated keeping within the law if possible. Now, more than ever, did I feel called upon to plead for moderation, and I told them in the plainest terms that, if they had recourse to violence and riot and

³⁷ Dainotto, ‘Mapping the Country,’ p.58

³⁸ Joseph Arch, *The Story of His Life told by Himself* (London: Hutchinson & Co, 1898), p.67

³⁹ Michael Millgate, *Thomas Hardy: A Biography Revisited* (Oxford: Oxford University Press, 2004), p.136

⁴⁰ Hardy, ‘The Dorsetshire Labourer’, p.184

⁴¹ F.E. Hardy, *The Life of Thomas Hardy*, pp.335-37

incendiarism, or if they wantonly destroyed any kind of property, they must not look to Joseph Arch to lead them.⁴²

Arch's approach was pragmatic, particularly in light of the fate of the Tolpuddle Martyrs; rural insurrection was met with increased force from the rural police in an effort to curb such tendencies. Arch relates how his non-confrontational position was a purposely-adopted image, necessitated by public opinion and the presence of the police:

Neither I nor they should wear handcuffs and see the inside of a gaol, if I could help it. We had come there to strike off the rusty old fetters that had crippled us, and our fathers before us, not to forge new ones for ourselves. We had come there to gain our freedom by lawful means, not to lose what little we had by lawlessness. We were going to stand up for our rights, we were going to ask for our just dues, and we were resolved to have them; but from first to last we were going to act as law-abiding citizens, not as red-handed revolutionaries.⁴³

Clym, preaching at the end of *The Return of the Native*, positioned on a beacon on the heath may have been suggested by Hardy's witnessing Arch's outdoor meetings, when he addressed thousands of labourers and encouraged strike action and the formation of an Agricultural Labourer's Union. Arch considered himself a preacher and aligned himself with the prophet Ezekiel as he records:

[T]hus saith the Lord God; come from the four winds, O breath, and breathe upon these slain, that they may live. So I prophesied as he commanded me, and the breath came into them, and they lived and stood upon their feet, an exceeding great army.⁴⁴

Clym likewise in the final chapter of the novel 'finds his vocation' (*RN*, p.397) preaching 'on morally unimpeachable subjects' (*RN*, p.405) on a Sunday. While both Arch and his fictional counterpart Clym considered themselves in a vocational role, Hardy's depiction

⁴² Arch, *The Story of his Life*, p.74

⁴³ *Ibid*, pp.74-5

⁴⁴ *Ibid*, p.79

of Clym reinterprets Arch's role and with hindsight measures the result of Arch's preaching.

While Clym may have been modelled on Joseph Arch, the rural labourers of *The Return of the Native* have a different reaction to those who witnessed Arch. Hardy remarked the picture Arch drew

of a comfortable life as it should be, [that] was so cosy, so well within the grasp of his listeners' imagination that an old labourer in the crowd held up a coin between his finger and thumb, exclaiming, "Here's zixpence toward that, please God!"⁴⁵

Arch recalled that

all the leading papers took note of this strange thing; they could no longer ignore the fact that a great moral and intellectual awakening was in progress among the down-trodden peasantry of England.⁴⁶

He also recalls the reaction of his listeners:

I knew now that a fire had been kindled which would catch on, and spread, and run abroad like sparks in stubble; and I felt certain that this night we had set light to a beacon, which would prove a rallying point for the agricultural labourers throughout the country.⁴⁷

Clym instils no such response in his small rustic audience. The labourers who hear his first lecture summarise the local attitude to his project:

"He'll never carry it out in the world," said Fairway. "In a few weeks he'll learn to see things otherwise."

⁴⁵ Hardy, 'The Dorsetshire Labourer,' p.184

⁴⁶ Arch, *The Story of his Life*, p.79

⁴⁷ *Ibid*, p.74

“‘Tis good-hearted of the young man,” said another. “But, for my part, I think he had better mind his business” (*RN*, p.189).

Their conclusion is borne out by events. Clym fails in his educational project because rather than campaigning for legal reform to improve the conditions of the labouring class, Clym wishes to embark on an educational project to promote passive acceptance, to encourage them to learn ‘how to breast the misery they are born to’ (*RN*, p.193) which he outlines in a chapter of the novel entitled ‘The New Course causes Disappointment.’ Whereas Arch understood the necessity for improving the financial conditions of the rural labourer, Clym persists in failing to see this necessity:

A man who advocates aesthetic effort and deprecates social effort is only likely to be understood by a class to which social effort has become a stale matter. To argue upon the possibility of culture before luxury to the bucolic world may be to argue truly, but it is an attempt to disturb a sequence to which humanity has been long accustomed (*RN*, p.190-91).

The inefficacy of Clym’s educational project is represented by his blindness and his enforced position as a rural labourer, which is depicted as a hardship to which he is complacently resigned. The novel closes with Clym advocating to his small audience of labourers passive acceptance of their lot.

The final scene of the novel creates a sense of social ills that have not been remedied. Through the image of the bonfires on the Egdon hillside Hardy alludes to the social issues and resultant unrest of the contemporary rural population to highlight economic inequality which was as yet unresolved as he wrote *The Return of the Native* in 1878. The labourers’ revolt continued throughout the middle of the nineteenth century although not as part of a unified faction. By the end of the century, many political grievances of the poor rural labourer were unresolved and the agricultural depression of the 1870s raised issues regarding the widespread unemployment and poverty of the agricultural community. The 1840s witnessed the height of arson attacks, which continued to be a seasonal threat to law and order with peaks occurring in 1844, 1849-52 and notably again

in 1862-64 and 1868-69,⁴⁸ revealing that rural violence sporadically continued throughout much of Hardy's lifetime. 1864 was a year of particular contestation between crowds and authorities over the celebration of Guy Fawkes' Day; on the Fifth of November 1864 Jo Draper records that the police were called in to try to stop the rolling of flaming tar barrels down Dorchester's High Street⁴⁹ and Terry Hearing documents that

The question of who should pay for the extra expense of preserving the peace in Dorchester on Guy Fawkes night 1864 was raised in Quarter Sessions in January 1865. Furious at being forbidden to indulge their tradition of racing blazing tar-barrels down High West Street, the mob rioted and broke the windows of the Town Clerk. A year later it occurred again and the Borough justices claimed £45 towards their costs.⁵⁰

Riotous demonstrations and arson continued for a number of years. In 1869, *The Times* reports that 'Samuel Kellaway was indicted for setting fire to a plantation belonging to Alfred Tennyson, the poet laureate on the 5th of November.'⁵¹ Hardy's friend and fellow-magistrate, John Symonds Udal recalls that as late as the 1880s, soldiers were called in to aid the police in controlling the crowds at Dorchester.⁵² Given the context of the Guy Fawkes celebrations in the 1840s at the height of the November Fifth rioting, before it largely came under police control, it would seem that Hardy's choice of time setting of his first tragic novel was not merely arbitrary

Hardy's setting of *The Return of the Native* in 1842 highlights the conditions of the labouring class at a pivotal historical moment when the Chartist agitation was at its height. Initially, the Chartist movement was greeted with sanguine enthusiasm; John Bates recalls that

⁴⁸ David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London: Routledge and Kegan Paul, 1982), p.34

⁴⁹ Jo Draper, *Dorchester* (Chalford: Chalford Publishing, 1997), p.11

⁵⁰ Terry Hearing, *Dorset Justice*, p.103

⁵¹ 'Western Circuit. Winchester, March 3,' *The Times* 6 Mar. 1869, sec. E: 4

⁵² Udal, *Dorsetshire Folk-lore*, p.48

When [...] the People's Charter was drawn up ... clearly defining the urgent demands of the working class, we felt we had a real bond of union; and so transformed our Radical Association into local Chartist centres.⁵³

However, the petition of 1842 was never debated in Parliament and subsequently, as a movement, Chartism waned. Roger Ebbatson attests to the lack of solidarity of agricultural workers, noting that 'the Revolt of the Field (1872) led to an agricultural union membership of 150,000, but within two years the unions were in disarray.'⁵⁴ Bates recalls that,

There were [radical] associations all over the county, but there was a great lack of cohesion. One wanted the ballot, another manhood suffrage and so on ... The radicals were without unity of aim and method, and there was but little hope of accomplishing anything.⁵⁵

George Rudé notes that

until the 1840s at least, no insurrectionary movement of the 'lower orders', whether of town or country, stood any chance of yielding positive results, unless supported by some combination of other social groups; and this, in fact, was rarely forthcoming.⁵⁶

The leaders of the Captain Swing riots had been put to death or transported in the 1830s and through fear of the authorities, radicals were reluctant to meet the same fate through group activity. The Acts of the Special Commissions set up to try offenders stipulated that

any persons riotously or tumultuously assembled together who destroyed any house, stable, coachhouse, outhouse,

⁵³ Dorothy Thompson, *The Chartists* (New York: Pantheon, 1984), p.60

⁵⁴ Roger Ebbatson, *Thomas Hardy: The Margin of the Unexpressed* (Sheffield: Sheffield Academic Press, 1993), p.149

⁵⁵ Thompson, *The Chartists*, p.60

⁵⁶ George Rudé, 'The Study of Popular Disturbances in the 'Pre-Industrial Age,' in *Historical Studies. Australia and New Zealand* 10, 1963, pp.457-69, p.469

barn, granary, or any building or erection or machinery used in caring on any trade or manufacture were to suffer death as felons.⁵⁷

Mr Justice Alderson, who tried the Dorsetshire rioters, advocated complacency and improved morals:

Poverty is indeed, I fear, inseparable from the state of the human race, but poverty itself and the misery attendant on it, would no doubt be greatly mitigated if a spirit of prudence were more generally diffused among the people, and if they understood more fully and practiced better their civil, moral and religious duties.⁵⁸

Hardy held a more sympathetic view with regard to the economic conditions of the agricultural labourer and contributed an essay on rural poverty, 'The Dorsetshire Labourer' to *Longman's Magazine* in July 1883. In this essay, he addresses issues in Dorset such as the plight of life-holders being turned out of their houses by the farmer or squire after the expiration of life-hold lease.⁵⁹ Annual migration resulted from the granting of one-year leases, which replaced the three-life lease-hold, due to the economic interests of tenant farmers.⁶⁰ Hardy notes that 'every one of these banished people imbibes a sworn enmity to the existing order of things.'⁶¹ Such a removal is depicted in *Tess of the d'Urbervilles* when Tess and her family are forced to leave their family-home on the death of John Durbeyfield who only held a lease on the property for the duration of his life (*TD*, pp.375-6). Hardy sympathizes with the labouring class and implicitly advocates changes to land-holding laws. He notes that rural crime arises as a result of displacement from rural homes and relocation to the towns and that this developed from radicalism into general anarchic displays of disaffection:

⁵⁷ J.L. and Barbara Hammond, *The Village Labourer 1760-1832: A Study in the Government of England Before the Reform Bill* (Stroud: Nonsuch, 2005), p.163

⁵⁸ *Ibid*, p.178

⁵⁹ Thomas Hardy, 'The Dorsetshire Labourer,' in Harold Orel, ed., *Thomas Hardy: Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan 1967), pp.168-89

⁶⁰ Keith D.M. Snell, *Annals of the Labouring Poor: social change and agrarian England, 1660-1900* (Cambridge: Cambridge University Press, 1985), p.378

⁶¹ Hardy, 'The Dorsetshire Labourer,' p.189

The system is much to be deplored, for every one of these banished people imbibes a sworn enmity to the existing order of things, and not a few of them, far from becoming merely honest Radicals, degenerate into Anarchists, waiters on chance, to whom danger to the State, the town - nay, the street they live in, is a welcomed opportunity.⁶²

Hardy relates this disenfranchised element of society, which is open to the opportunities presented by any social unrest, to the popular radicalism in the south of England resulting from the French Revolution: 'the question of the Dorset cottager here merges in that of all the houseless and landless poor, and the vast topic of the Rights of Man.'⁶³ Lance St John Butler notes that in 1883, following the publication of 'The Dorsetshire Labourer,' Hardy was asked to contribute an article on the condition of rural labourers, his initial response on 12th October was that he would write the article 'should [he] have any special opportunity of observing the labourers in their political aspect.'⁶⁴ By November Fifth he writes again declining to write the article on the grounds that it is 'such a purely political subject.'⁶⁵ The date's associations may have called forth a restraint like that evident in the de-politicised representation of the Egdonites in *The Return of the Native*.

Lance St John Butler raises the issue of Hardy's inconsistent political stance, which shifted between radical and conservative, and resolves the inconsistency by asserting that Hardy uses Bakhtinian polyphony,⁶⁶ a dialogue of voices incorporating conflicting political viewpoints. This is a critical viewpoint explored in depth by Roger Ebbatson in his analysis of 'The Dorsetshire Labourer.'⁶⁷ Subsequent to the publication of 'The Dorsetshire Labourer,' Hardy claimed that although he was a Liberal, he had

⁶² *Ibid*, p.189

⁶³ *Ibid*, p.189

⁶⁴ Richard L. Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1, 1840-1892 (Oxford: Clarendon Press, 1978), p.121, cited by Lance St John Butler, 'Stability and Subversion: Thomas Hardy's Voices' in Charles P.C. Pettit, *Celebrating Thomas Hardy: Insights and Appreciations* (Basingstoke: Macmillan Press, 1996), pp.39-53, p.45

⁶⁵ Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1, p.123, cited by St John Butler, 'Stability and Subversion,' p.45

⁶⁶ St John Butler, 'Stability and Subversion: Thomas Hardy's Voices' in Charles P C. Pettit ed., *Celebrating Thomas Hardy: Insights and Appreciations* (Basingstoke: Macmillan, 1996), pp.39-53, p.51

⁶⁷ Roger Ebbatson, 'The Dorsetshire Labourer' in *Thomas Hardy: the Margin of the Unexpressed*, (Sheffield: Sheffield Academic Press, 1993), pp.129-53

‘endeavoured to describe the state of things without political bias.’⁶⁸ Quoting from Havelock Ellis’s discussion of Zola, Hardy transcribed into his *Literary Notebook*:

Zola’s rule for novels—one must get one’s human documents...frequent the society of people one is studying...record their surroundings. “But have we got reality then? Does the novelist I casually meet...takes [*sic*] note of my cond[ition]...furniture & c...know anything whatever of the romance or tragedy which to me is the reality of my life, these other things being but shreds or tatters of life. Or if my romance or tragedy has got into a law-court or a police-court, is he really much nearer then? The unrevealable motives, the charm, the mystery...were not deposed to....Certain disagreeable details: do they make up reality? [...] Without a severe [sifting] of details the truly illuminating facts will be missed or lost in the heap.”⁶⁹

Hardy adopted Zola’s method of presenting a realist depiction of a community through knowing them by frequenting their society and knowing their surroundings. However, ultimately, Hardy believed Zola to be ‘no artist, but at bottom a man of affairs, who would just as soon have written twenty volumes of, say, the statistics of crime, or commerce, as of fiction – a passionate reformer, who had latterly found his vocation.’⁷⁰ By contrast Hardy distanced himself from socio-political issues, feeling

compelled to forego all participation in active politics, by reason of the neutrality of my own pursuits, which would be stultified to a great extent if I could not approach all classes of thinkers from an absolutely unpledged point.⁷¹

Hardy chose not to be so overtly sociological and buried his social and political concerns within the realm of fiction, depicting problems them through fictional representations without explicit narrative commentary.

⁶⁸ Richard Little Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1, 1840-1892, (Oxford: Clarendon Press, 1978), p.299 cited by St John Butler, ‘Stability and Subversion,’ p.45

⁶⁹ Lennart A. Björk, ed., *The Literary Notebooks of Thomas Hardy*, vol. 2 (London: Macmillan, 1985), pp.16-17

⁷⁰ Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 2, p.231

⁷¹ Millgate, *Thomas Hardy: A Biography Revisited*, p.226

Hardy's rustics, while they frequently indicate their poverty, are not presented as insurrectionists. While the lighting of bonfires in 1842 had political significance, in *The Return of the Native*, the Egdonites continue the custom 'far more for fun than Faux, and rather as fire-worshippers than politicians.'⁷² In an 1875 review of *Far from the Madding Crowd* in the *Academy*, Andrew Lang notes that contrary to reality, 'the country folk in the story have not heard of strikes, or of Mr. Arch; they have, to all appearances, plenty to eat, and warm clothes to wear.'⁷³ Hardy wished to stress the intelligence of his rural labourers; writing to Leslie Stephen regarding illustrations for *Far from the Madding Crowd*, Hardy expressed 'a hope that the rustics, although quaint, may be made to appear intelligent, and not boorish at all.'⁷⁴ The socio-political connotations of bonfires in *The Return of the Native* are submerged in the text and only suggested through repeated allusion to contemporary political unrest and the choice of time setting for the novel. The dialect narrative of the labourers is minimal and that which refers to the stealing of fuel is even elided from the manuscript version for the serialized and book versions of the novel. Ebbatson argues that 'the overall effect of Hardy's analysis is to elide the class antagonism, the gap between "dark" and "official" village, which permeated rural society at this juncture of severe agricultural depression.'⁷⁵ The voice of the workfolk can only be reached through an appreciation of the heteroglossic layers of the novel. The elision of class-consciousness was pragmatic in the light of Hardy's popularity as a pastoral novelist following *Under the Greenwood Tree* and *Far from the Madding Crowd*. That Hardy continued in the pastoral vein in *The Return of the Native* tempered any political undertones that may have come across in his presentation of the rustic characters, as observed by Ebbatson: 'By drawing upon a received comic tradition, Hardy softens and blurs the radicalism of the agrarian 'Revolt of the Field', and its potential for a shift in the ownership of land and production of food.'⁷⁶ Ralph Pite suggests that this apolitical approach in Hardy's 'The Dorsetshire Labourer' was pragmatic in the light of the contemporary political situation, when

⁷² William Barnes, 'Fore-say' in John Symonds Udall, *Dorsetshire Folklore* (Exeter: Dorset Books, 1989), pp.1-16, p.5

⁷³ Andrew Lang, in *Academy*, 2 January 1875, quoted by Millgate, in *Thomas Hardy: his Career as a Novelist*, p.103

⁷⁴ F.E. Hardy, *The Life of Thomas Hardy*, p.99

⁷⁵ Ebbatson, *Hardy: the Margin of the Unexpressed*, p.133

⁷⁶ *Ibid*, p.135

all forms of dissent looked threatening, whether they arose out of the Irish situation, industrial relations or the depression in agriculture. Farm labourers were known to be enduring hardship and their plight had been in the news several times that year already. Hardy did not wish his piece to be attacked as an untimely encouragement of rebellion.⁷⁷

When in 1895 The 1895 Preface to *The Return of the Native* which locates the novel's action temporally between 1840 and 1850 serves to point explicitly to a social and cultural context, which allows us to see Hardy's allusion to Promethean rebellion as agricultural labourers' expressions of discontent at their political and legal marginalization.

Hardy's second tragic novel is set in Casterbridge, a fictionalised version of Dorchester, the county town of Dorset. In *The Mayor of Casterbridge* (1885), Hardy again addresses issues of poverty, this time in an urban context. This has been appreciated by F.B. Pinion, who notes that 'one must take into account the agricultural depression of the period (at the end of the 1840s) in assessing the rather subdued tones of the Three Mariners *habitués*.'⁷⁸ The raising of the socio-economic context in the Preface allows us to consider the significance of the years of the Corn Law Agitation, which preceded the 1846 repeal.

The Preface to *The Mayor of Casterbridge* points to a specifically political and legal context for the novel. The Corn Laws, which stated that no foreign corn would be allowed into Britain until domestic corn reached a price of 80 shillings per quarter, benefited landholders and established corn merchants. The existence of tariffs on imported grain legally protected Casterbridge from the foreign market trade and localised the grain market. In 1837, an Anti-Corn Law League, which fought for lower grain prices, was founded in Manchester and in 1839 Richard Cobden formed a national campaign. The majority of the labouring class supported the Anti-Corn Law movement.

⁷⁷ Ralph Pite, *Thomas Hardy: The Guarded Life* (London: Picador, 2006), p.275

⁷⁸ F.B. Pinion, *Thomas Hardy, Art and Thought* (London: Macmillan, 1977), p.81

Hardy himself recalls a memory connected with the Corn Law Agitation, when he dipped a sword which his father had given him, into the blood of a pig which had just been killed 'and brandished it as he walked about the garden, exclaiming: 'Free Trade or blood!'⁷⁹ Hardy many years later celebrated the speech of Robert Peel overturning the Corn Laws, which he quotes through Jude's consciousness in *Jude the Obscure* (1895):

"Sir I may be wrong, but my impression is that my duty towards a country threatened with famine requires that which has been the ordinary remedy under all similar circumstances should be resorted to now, namely, that there should be free access to the food of man from whatever quarter it may come...Deprive me of office to-morrow, you can never deprive me of the consciousness that I have exercised the powers committed to me from no corrupt or interested motives, from no desire to gratify ambition, for no personal gain" (*JO*, p.105).

In *Rural England*, H. Rider Haggard sums up the political climate of the 1840s when the Anti-Corn Law agitation peaked:

Our policy of Free Trade [...] has shot its fibres through every part and organ of the body corporate, till it is in truth no excrescence or addition, but an integral part of our national life [...]. Protection must mean dearer food ... and dearer food to the vast majority means less food and more work. To escape these things even law-abiding men might shed blood.⁸⁰

Cobden advocated political reform through democratic means, but the Anti-Corn Law movement of the early 1840s, fuelled by the trade depression, often involved rural violence. Initially the Leaguers disassociated themselves from the activities of the more radical Chartists, but from 1843, following the failure to induce Peel to repeal the Corn Laws through petition, the actions of the Anti-Corn Law League turned violent.⁸¹ In January 1846, for example, *The Times* reports on a group of about a thousand starving

⁷⁹ F.E. Hardy, *The Life of Thomas Hardy*, p.501

⁸⁰ H. Rider Haggard, *Rural England*, vol. 2 (Longmans, Green and Co., 1906), p.538

⁸¹ Norman McCord, *The Anti-Corn Law League 1838-1846* (London: Unwin, 1958), p.131

Wiltshire labourers who met at a cross-roads by night to agitate for the repeal of the Corn Laws.⁸² Members of the League joined forces with Chartists to protest.⁸³ Hardy noted that action taken against rural insurrectionists by a corps of yeomanry during rural unrest in the 1830s was co-ordinated at the King's Arms in Dorchester.⁸⁴ More significantly, John Bright campaigned for the Repeal of the Corn Laws in Dorchester, which was the last stronghold for Protectionists of the Corn Laws and wrote to Richard Cobden of his success at the end of a three-hour debate at the King's Arms.⁸⁵ This may have influenced Hardy's choice of setting for the banquet at which Henchard presides in *The Mayor of Casterbridge*, when the issue regarding the poor quality of the local corn comes to a head.

The closed market system brought about by the Corn Laws, which favoured corn merchants at the expense of consumers, allows Henchard's rise to success in the intervening years from his arrival to Casterbridge to the time of the main action of the novel. Thus, as Ian Gregor notes,

far from presenting an innocent agrarian community undermined by new grasping business methods, Hardy shows in Henchard [...] the last of the old profiteers, existing by courtesy of a closed system of economic protection.⁸⁶

Michael Valdez Moses points to the security of Henchard's position prior to the Corn Laws, observing that

since the repeal of the Corn Laws neutralised the impact that any one merchant could have on the availability and

⁸² 'The Corn Laws. Meeting of Agricultural Labourers in North Wilts,' *The Times* 7 Jan. 1846, sec. D: 5
⁸³ G. Kitson Clarke, 'Hunger and Politics in 1843', in *The Journal of Modern History* 25(4) 1953, pp.355-374, p.362
⁸⁴ Greenslade, ed., *Thomas Hardy's 'Facts' Notebook*, p.285
⁸⁵ George Macaulay Trevelyan, *The Life of John Bright* (London: Routledge, 1993), p.96
⁸⁶ Ian Gregor, *The Great Web: the Form of Hardy's Major Fiction* (London: Faber, 1974), p.131

price of grain, their elimination at an earlier date would have made Henchard's plan to ruin Farfrae inconceivable.⁸⁷

Henchard's security as the leading corn merchant of Casterbridge is challenged by the local community, when we first see Henchard presiding over a banquet at the King's Arms. While the Corn Law Agitation is not directly evoked, public sentiment regarding the economic climate and the responsibility of Henchard as magistrate to relieve the situation pervades the scene. Henchard is not in the political position of being asked to advocate Free Trade, but is held responsible for selling 'growed wheat' (MC, p.61) to millers, which resulted from a poor harvest. The issue is first raised at Henchard's first public appearance in the novel as mayor. This is a public dinner at which classes are hierarchically separated by the physical space of the King's Arms; as an old man observes to Elizabeth-Jane:

"Why, 'tis a great public dinner of the gentle-people and such like leading volk — wi' the Mayor in the chair. As we plainer fellows bain't invited, they leave the winder-shutters open that we may get jist a sense o't out here" (MC, p.63).

The issue of the bad bread is immediately tied to class issues; the first complaint

came from the lower end of the table, where there sat a group of minor tradesmen who, although part of the company, appeared to be a little below the social level of the others; and who seemed to nourish a certain independence of opinion and carry on discussions not quite in harmony with those at the head (MC, p.67).

There is no allusion to the Anti-Corn Law agitation, but suggestions of Anti-Corn Law sentiment are depicted in *The Mayor of Casterbridge* through Hardy's use of Biblical allusion. Hardy uses such allusion to complicate our response to Henchard, allowing him a measure of sympathy.

⁸⁷ Michael Valdez Moses, 'Agon in the Marketplace: *The Mayor of Casterbridge* as Bourgeois Tragedy,' in Julian Wolfreys ed., *The Mayor of Casterbridge: Contemporary Critical Essays* (London: Macmillan, 2000), pp.170-201, p.178

The religious convictions of the leaders and the majority of members of the Anti-Corn Law League infiltrated their political action. Cobden wrote to Villiers in 1841: 'Henceforth we will grapple with the religious feelings of the people — their veneration for God shall be our leverage to upset their reverence for the aristocracy.'⁸⁸ Drawing on the success of the abolitionists in America, Cobden saw an advantage to be gained through infusing 'a moral and even religious spirit into the topic.'⁸⁹ Ministers who attended Anti-Corn Law League conferences asserted that the Corn Laws were anti-scriptural.⁹⁰ Hymns were sung in support of the striking millers⁹¹ and passages from Isaiah and Jeremiah were daubed on banners during protests.⁹² Pickering and Tyrell state that: 'In scriptural language League banners demanded the bread of life and invoked curses on those who withheld it from the people [and] specially composed Anti-Corn Law hymns were sung.'⁹³ As Ian Gregor notes, Henchard and Farfrae's use of song is ironic,⁹⁴ with Farfrae singing a Jacobite ballad with feigned home-sick patriotism, while Henchard, the Protectionist, adopts Biblical language characteristic of Anti-Corn Law rhymes. Henchard applies the Biblical curse of Psalm 109 to Farfrae:

A swift destruction soon shall seize
On his unhappy race;
And the next age his hated name
Shall utterly deface (MC, p.242).

Yet the curse rebounds on Henchard and he himself is left destitute, bankrupt and childless. Corn Law Rhymer Ebenezer Elliott prefaced a volume of his rhymes with a

⁸⁸ Richard Cobden to Charles Villiers, 6 June 1841, BL, Cobden Papers, Add. MSS 43662, quoted in Paul A. Pickering and Alex Tyrrell, *The People's Bread: A History of the Anti-Corn Law League* (London: Leicester University Press, 2000), p.88

⁸⁹ G. Kitson Clarke, 'The Repeal of the Corn Laws and the Politics of the Forties' in *The Economic History Review* 4(1), 1951, pp.1-13, p.5

⁹⁰ McCord, *The Anti-Corn Law League 1838-1846*, p.106

⁹¹ Letter from John Bright to George Wilson, quoted in Norman McCord, *The Anti-Corn Law League 1838-1846*, p.127

⁹² G. Kitson Clarke, 'Hunger and Politics in 1842,' p.362

⁹³ Pickering and Tyrrell, *The People's Bread*, p.88

⁹⁴ Ian Gregor, ed, *The Mayor of Casterbridge* (London: Macmillan, 1974); see also, C.M. Jackson-Moulston, 'Thomas Hardy's Use of Traditional Song' in *Nineteenth Century Literature* 44(3), 1989, pp.301-34, pp.316-318

denunciation of Corn Law Protectionists as murderers.⁹⁵ Henchard ultimately internalizes this type of Anti-Corn Law accusation; as he exiles himself from Casterbridge, he dramatically aligns himself with the classical Biblical murderer: “I Cain - go alone as I deserve - an outcast and a vagabond. But my punishment is not greater than I can bear!” (MC, p.314). It is no accident that it is Cain’s Abel who provides the eulogy on Henchard’s self-exile. Abel Whittle’s ambiguous attitude to Henchard as Protectionist within a localised market reflects Hardy’s own attitude to the widening of the socio-economic market, which resulted from the Repeal of the Corn Laws. Whittle’s summary of the local effect of the transition reflects that the improvement is only in terms of the personality of one local corn-merchant. Otherwise, the extent of the improved conditions is questionable, as the labourers work harder and are materially less well off.

Biblical allusion is also used to complicate the reader’s response to the residents of Casterbridge. The allusion to the Cave of Adullam in *The Mayor of Casterbridge* has been explained with reference to the development of characterisation of the rival characters Henchard and Farfrae along the lines of the Saul-David relationship.⁹⁶ This allusion however, gathered political overtones in the middle of the nineteenth century. In the first book of Samuel, the Cave of Adullam was an underground cavern where David, when he had been expelled from the court of King Saul, gathered together ‘every one that was in distress, and every one that was in debt, and every one that was discontented’ (1 Sam. 22:2). This phrase was coined in a political context by John Bright, one of the founder-members of the Anti-Corn Law League. Between 1841 and 1846, Bright toured the country speaking from platforms, denouncing Corn Law Protectionists. In Parliament on March 13th 1866, Bright criticised Liberal dissenters Edward Horsman and Robert Lowe, who opposed the Reform Bill.⁹⁷ Lowe had disparaged the moral characters of

⁹⁵ Keith Morris and Ray Hearne, ed., *Ebenezer Elliott: Corn Law Rhymer and Poet of the Poor* (Rotherham: Rotherwood Press, 2002), p.61

⁹⁶ Paul Turner, *The Life of Thomas Hardy: a Critical Biography* (Oxford: Blackwell, 1998), p.95; Julian Moynahan, ‘*The Mayor of Casterbridge* and the Old Testament’s First Book of Samuel: A Study of Some Literary Relationships’ in *Publications of the Modern Language Association of America* 71(1), 1956, pp.118-30

⁹⁷ James Winter, ‘The Cave of Adullam and Parliamentary Reform’ in *The English Historical Review*, 81, 1966, pp.38-55, p.38

working class men of his own party⁹⁸ and based on this criticism, Bright directed a slight toward Horsman:

the Right hon. gentleman is the first of the new party who has expressed his great grief, who has retired into what may be called his political Cave of Adullam, [and] has called about him 'every one that was in distress and every one that was discontented.'⁹⁹

The term Adullamites subsequently gained currency as a name for political outsiders plotting the overthrow of the ruling class. Thus Mixen Lane is referred to as the Cave of Adullam and the narrator notes that Mixen Lane residents Coney and Nance Mockridge, who contribute to Henchard's downfall through the skimmington-riding, have previously criticized Henchard for his bad corn (*MC*, p.109). This is suggestive of the skimmington-riding as a moral judgment on Henchard for his failure as mayor and leading corn merchant.¹⁰⁰ Henchard, the leader of the community, is held responsible for the 'unprincipled bread' (*MC*, p.62) and the community play a retributive role as a result. Although Henchard and Farfrae set up as rival corn merchants in Casterbridge, it is the Mixen Lane community and not Farfrae, who cause Henchard's downfall. This leads us to consider the socio-economic impetus that drives them to instigate the fatal skimmington-riding that originates in Mixen Lane.

The depiction of Mixen Lane in *The Mayor of Casterbridge* emphasises poverty and disease (a 'misen' is a dunghheap¹⁰¹); it is described as 'a back slum of the town, the *pis aller* of Casterbridge domiciliation' (*MC*, p.197).

Mixen Lane was the Adullam of all the surrounding villages. It was the hiding-place of those who were in

⁹⁸ *Ibid*, p.41

⁹⁹ Trevelyan, *The Life of John Bright*, pp.355-6

¹⁰⁰ Drawing on contemporary folklore, Christina Hole suggests an alternative reason for the skimmington's prevalence in the nineteenth century, which is 'the primitive notion that incest, adultery or immorality blighted the crops.' Christina Hole, *English Folklore* (London: 1940), p.24, quoted by Joe Fisher in 'The Mayor of Casterbridge: Made of Money' in Wolfreys, ed., *The Mayor of Casterbridge*, pp.132-52, p.147

¹⁰¹ William Greenslade, *Degeneration, Culture and the Novel, 1880-1940* (Cambridge: Cambridge University Press, 1994), p.55

distress, and in debt, and trouble of every kind. Farm-labourers and other peasants, who combined a little poaching with their farming, and a little brawling and bibbing with their poaching, found themselves sooner or later in Mixen Lane. Rural mechanics too idle to mechanize, rural servants too rebellious to serve, drifted or were forced into Mixen Lane (*MC*, p.261).

Given the political context of the Anti-Corn Law agitation, the portrait of Mixen Lane may have its source in John Bright's 1866 speech, as the description focuses on criminal activity and does not contribute to a sustained Biblical allusion:

Vice ran freely in and out certain of the doors in the neighbourhood; recklessness dwelt under the roof with the crooked chimney; shame in some bow-windows; theft (in times of privation) in the thatched and mud-walled houses by the salallows. Even slaughter had not been altogether unknown here. In a block of cottages up an alley there might have been erected an altar to disease in years gone by. Such was Mixen Lane in the times when Henchard and Farfrae were Mayors (*MC*, p.261).

Mixen Lane is a fictional version of the real-life area of Fordington. Historically, alehouses of Fordington were linked with criminal activity; David Underdown notes that Nicholas Hellier's unsavoury alehouse in Fordington was a base for poaching¹⁰² as it is in *The Mayor of Casterbridge* (*MC*, p.261). The breaking of the Law had serious ramifications in the 1840s. In the early nineteenth century, many distasteful recreations were banned and heavily punished under the 'Bloody Code,' for example, the Game Law of 1816 rendered a man liable to transportation even if only suspected of poaching. Hardy's portrait of the Mill Street residents reflects the deep sense of need, which drove them to the area, evident also in 'The Dorsetshire Labourer.'

As Hardy noted in 'The Dorsetshire Labourer,' the towns that developed with the migration of labourers were rife with criminality, and the depiction of such a denizen is given in the lively portrait of the Mixen Lane area of his fictional Casterbridge. The area,

¹⁰² David Underdown, *Fire From Heaven*, p.264

while associated with criminality, is for Hardy a reflection of the injustice of the social structure, which led to the existence of areas of this nature. Hardy argues that

a natural tendency to evil, which develops to unlawful action when excited by contact with others like minded, would often have remained latent amid the isolated experiences of a village life. The cause of morality cannot be secured by compelling a population hitherto evenly distributed over the country to concentrate in a few towns, with the inevitable results of overcrowding and want of regular employment.¹⁰³

While acknowledging a natural inclination toward crime, Hardy argues that this is precipitated by social causes. This is demonstrated fictionally in a sociological exploration and sympathetic portrait of the residents of Mixen Lane, which is based on the real life area of Mill Street. William Greenslade observes that Hardy distinguishes between the classes that inhabit Mixen Lane:

While both are consigned to the same disreputable territory, Hardy distinguishes between the respectable tradesmen, uprooted from a traditional and legally-sanctioned way of life, and the small-town proletariat with their deviant culture.¹⁰⁴

Hardy emphasizes the presence in Mixen Lane of those driven to crime through poverty as a result of restrictive land-holding laws that result in social migration; the dilapidated and criminal denizen thus includes ‘families from decayed villages ... of that once bulky, but now nearly extinct, section of village society called ‘liviers’ or life-holders – copyholders and others’ (*MC*, p.262), who ‘drifted or were forced into Mixen Lane’ (*MC*, p.261).

Hardy was familiar with Fordington on which Mixen Lane is based; it is a part of Dorchester lying behind the building where Hardy’s employer John Hicks had his office, where Hardy worked from 1856 to 1862. Max Gate was built on a site at Fordington

¹⁰³ Hardy, ‘The Dorsetshire Labourer,’ p.189
¹⁰⁴ Greenslade, *Degeneration, Culture and the Novel*, p.56

Field. Cuckold Row, Fordington, had been the address of Hardy's paternal uncle, John Hardy, in the early 1840s.¹⁰⁵ Florence Hardy became involved in the regeneration of the area, as the chairperson of the Mill Street Housing Society, which worked to raise money for the building of new homes when the slum cottages were demolished.¹⁰⁶ The population of Mill Street on which Mixen Lane is based increased dramatically at the beginning of the nineteenth century as a result of it remaining freehold. By 1854, the population of this area was more than one thousand living in two or three small streets.¹⁰⁷ With the outbreak of cholera in 1849 and 1854, the Mill Street area became an urban slum. Henry Moule's letters printed in the *Dorset County Chronicle* in September 1854 refer to the inhabitants of the Mill Street area being labourers and mechanics among whom were sent 700 convicts from the Mill Bank Penitentiary.¹⁰⁸ Aware of the vices prevalent in the area, Moule worked toward its restitution. From his arrival to the parish in 1828, he spoke out against the vice and immorality of the area, which met with resistance from the Dorchester locals. Disturbances occurred and, as with the Guy Fawkes' Day riots, were heightened on public holidays. Robert Gittings notes that outside Moule's house, 'each Maundy Thursday night, they marked Easter Festival by uprooting the vicarage railings and garden shrubs, and his children were jeered at in the streets.'¹⁰⁹ Moule however, sympathized with and defended the occupants of Fordington:

And yet it must not be supposed, that in the midst of such a state of things all are filthy and vicious. No – there are instances indeed of quiet industry, and of cleanly habits, and of Christian conduct. But these again are the very cases in which the evils are most deeply felt.¹¹⁰

Hardy echoes this in *The Mayor of Casterbridge*:

Yet amid so much that was bad needy respectability also found a home. Under some of the roofs abode pure and

¹⁰⁵ Millgate, *Thomas Hardy: A Biography Revisited*, p.13

¹⁰⁶ Draper, *Dorchester*, p.75

¹⁰⁷ Jo Draper, *Dorchester: a Illustrated History* (Wimborne: Dovecote Press, 1992), p.40

¹⁰⁸ Henry Moule, *Paupers, Criminals and Cholera At Dorchester in 1854* (Mount Durand, St. Peter Port, Guernsey: The Toucan Press, 1968), p.5

¹⁰⁹ Robert Gittings, *Young Thomas Hardy* (London: Heinemann Educational Books Ltd., 1975), p.36

¹¹⁰ Moule, *Paupers, Criminals and Cholera*, p.9

virtuous souls whose presence there was due to the iron hand of necessity, and to that alone. Families from decayed villages — families of that once bulky, but now nearly extinct, section of village society called ‘liviers,’ or lifeholders — copyholders and others, whose roof-trees had fallen for some reason or other, compelling them to quit the rural spot that had been their home for generations — came here, unless they chose to lie under a hedge by the wayside (MC, p.262).

In *The Life*, Hardy records that he was asked by Bishop Wordsworth of Salisbury, to comment ‘on the migration of the peasantry, “which is of considerable social importance and has a very distinct bearing on the work of the Church”: “Are they good or bad morally and in respect of religion, respectability, etc., to men, women and children.”’¹¹¹ Hardy states that his answer ‘cannot be discovered,’ instead noting that ‘he is known to have held that these modern migrations are fatal to local traditions, and to cottage horticulture.’¹¹² Hardy sedulously avoids the question regarding morality, instead commenting on ‘the lack of picturesqueness in modern labourers’ dwellings.’¹¹³ Through the depiction of the representative denizen of Mixen Lane, however, Hardy gives an accurate and sympathetic portrait of a community whose presence there is due to ‘the iron hand of necessity’ (MC, p.262).

Hardy’s concerns with the socio-economic plight of the agricultural labourer are again reflected in his use of landscape in *Tess of the d’Urbervilles*. As Arnold Kettle argues, Tess’s fate is representative of ‘the destruction of the English peasantry.’¹¹⁴ Douglas Brown likewise emphasises Tess’s representative function and seeks to locate different episodes of *Tess of the d’Urbervilles* as indicative of the conflict between urban and rural forces.¹¹⁵ Thus he reminds us of Tess’s ‘unspoiled childhood and the May festivities’¹¹⁶ of the opening scene of the novel at Blackmoor Vale. The narrator of *Tess*, however, alerts us to the disparity between the vale’s appearance and its hidden reality:

¹¹¹ F.E. Hardy, *The Life of Thomas Hardy*, p.214

¹¹² *Ibid*, p.214

¹¹³ *Ibid*, p.214

¹¹⁴ Arnold Kettle, *Introduction to the English Novel*, vol. 2 (London: Hutchinson and Co., 1953), p.45

¹¹⁵ Brown, *Thomas Hardy*, p.91

¹¹⁶ *Ibid*, p.93

The secret of Blackmoor was best discovered from the heights around; to read aright the valley before her it was necessary to descend into its midst (*TD*, p.133).

It is a vale whose acquaintance is best made by viewing it from the summits of the hills that surround it—except perhaps during the droughts of summer. An unguided ramble into its recesses in bad weather is apt to engender dissatisfaction with its narrow, tortuous, and miry ways (*TD*, p.37).

Keith Snell observes that Blackmoor Vale, rather than being a peaceful rural idyll, was the scene of significant unrest during the ‘Swing’ rioting of 1830-1.¹¹⁷ Barbara Kerr devotes a chapter of her study of rural England to the ‘The Blackmoor Vale: Lives of Casualties and Expedients’¹¹⁸ to illustrate that ‘in this Vale, enfolded by Hardy’s languorous atmosphere, were bred the most determined of the Dorset rioters who rose in 1830.’¹¹⁹ Based on numbers apprehended for disturbances, Kerr’s evidence points to Blackmoor Vale as the centre of the Dorset rising.¹²⁰ Despite the drafting in of special constables there was continued resistance in the Vale to the efforts of the authorities to quell demonstrations, such as destruction of machinery.¹²¹ In his ‘Facts’ notebook, Hardy records a news report from the *Dorset County Chronicle* of a mob, which collected to burn a threshing machine in the Blackmoor Vale village of Henstridge.¹²² Hardy’s representation of the labouring class ultimately provides a pastoral gloss over harsh reality. In 1912 Hardy added a Preface to *Under the Greenwood Tree* which alludes to the care he took to elide harsh realities as he notes that the ‘realities out of which [the narrative] was spun were material for another kind of study,’ but ‘circumstances would have rendered any aim at a deeper, more essential, more transcendent handling unadvisable at the date of writing.’ While ‘The Dorsetshire Labourer’ advocates the changing of land law, the novels do not present a political or economic solution.

¹¹⁷ Snell, *Annals of the Labouring Poor*, p.386

¹¹⁸ Barbara Kerr, *Bound to the Soil: a Social History of Dorset, 1750-1918* (Dorset: Baker, 1968), pp.90-122

¹¹⁹ *Ibid*, p.91

¹²⁰ *Ibid*, p.104

¹²¹ *Ibid*, p.114

¹²² Greenslade, ed., *Thomas Hardy’s ‘Facts’ Notebook*, 193[c]

Following an account of the contemporary labouring class's way of life, Snell likewise argues:

The novels rarely enter seriously and sympathetically into the area of labourer's values, priorities, and subjective experience, and are revealingly reticent on the actual conditions of life in Dorset: on the low wages and unemployment; on the prevalence of and reasons for religious non-conformity; on the reality and character of political belief; on the agricultural unionism and bitterness of class antagonism; on labourers' attitudes to work and the uses of the land; on working-class sexuality; on familial relationships and the treatment of the elderly; on the notorious hostility to the new Poor Law and its administrators.¹²³

Snell argues that Hardy's narratives are imbued with class-based generalizations and romantic gloss and accuses him of 'misrepresentations which held reassurance for the agricultural employing class and Hardy's readership, and which reveals its political partiality in all that it deliberately omits and discounts.'¹²⁴ Roger Ebbatson likewise notes the marginalization of the voice of the rural labourer in 'The Dorsetshire Labourer,' arguing that

By drawing on the potent categories of clown and fool, the voices of carnival, Hardy seeks to avert the reader's gaze from the facts of the labourer on the heath, from the daily grind, of furze-cutting in all weathers, poverty, squalid living conditions and dispossession.¹²⁵

Both Snell and Ebbatson account for the absence of a realistic account of the labouring class's hardship as resulting from Hardy's serving the class interest of the readers of *Longman's Magazine*. They contend that Hardy's radical sympathies were complicated and tempered by his consciousness of his own transitional social position and the literary market. Hardy's first novel *The Poor Man and the Lady* was criticised for being too

¹²³ Snell, *Annals of the Labouring Poor*, p.392

¹²⁴ *Ibid*, p.396

¹²⁵ Ebbatson, *Hardy: The Margin of the Unexpressed*, pp.142-43

radical; 'the tendency of the writing being socialistic, not to say revolutionary.'¹²⁶ From hereon Hardy buried his political and reformatory outlook in his fiction.

Hardy created a sympathetic exposition of a representative group of labourers in the fictional locale of Wessex, to highlight their socio-economic plight in the post-Chartist apathy of the rural Dorset community of Egdon Heath, and in the condition of the migratory labourers of Marlott. Ultimately, as Roger Ebbatson argues of 'The Dorsetshire Labourer,' in Hardy's novels also 'class conflict and ideological contradiction is masked by [...] suave formulations,'¹²⁷ which sustain Hardy's mythologised version of Wessex.

C.H. Salter, clearly considering the novel as a forum to instigate social change, argued that 'a sociologist who does not take sides is fine as an academic, but as a novelist he is without social concern.'¹²⁸ Hyde however argues that 'Hardy's view of reality aims to transcend that of the social propagandist.'¹²⁹ Thus the narratives of his novels do not make explicit commentary on the living conditions of the agricultural labourer. Hardy depicts effects of legal and social conditions on the rural labouring class rather than causes and thus, as Raymond Williams notes:

It is not only that Hardy sees the reality of labouring work, as in Marty South's hands on the spars and Tess in the swede field. It is also that he sees the harshness of the economic processes, in inheritance, capital, rent and trade, within the continuity of the natural processes and persistently cutting across them. The social process created in this interaction is one of class and separation, as well as of chronic insecurity, as this capitalist farming and dealing takes its course.¹³⁰

G.W. Sherman likewise argues that the social and political status of agricultural labourers lies at the heart of what he terms Hardy's pessimism, and suggests that the narrative

¹²⁶ F.E. Hardy, *The Life of Thomas Hardy*, p.63

¹²⁷ Ebbatson, *Hardy: the Margin of the Unexpressed*, p.130

¹²⁸ C.H. Salter, *Good Little Thomas Hardy* (London: Macmillan, 1981), p.29

¹²⁹ William J. Hyde, 'Hardy's View of Realism: A Key to the Rustic Characters' in *Victorian Studies: A Journal of the Humanities, Arts and Sciences* 2, 1958, pp.45-59, p.54

¹³⁰ Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1975), p.210

concern with industrial change increases with the progression of Hardy's novelistic career and is central to his art:

The main reason for the pessimism of the Wessex novels is the farmworkers' loss of their freeholds that they had enjoyed as yeomen, and their plight of not having any voice in Parliament [...] In *Tess* and *Jude*, Hardy most fully depicts the effect of the Industrial Revolution in Wessex and London, and both bear out the historical change.¹³¹

Hardy's addition of Prefaces in 1895 serves to emphasize the landscapes and time settings of his tragic novels. They provide an allusive backdrop that points to, rather than hides, the disparity between the pastoral idyll and harsh reality. Roger Ebbatson is alert to the significance of such nuances in Hardy's novels and points to the need to read 'against the grain' of 'The Dorsetshire Labourer' essay, to expose and interrogate the contradictions of Hardy's prose.¹³² Through a Bakhtinian reading of Hardy's sociological essay, Ebbatson exposes how the voice of the workfolk is smoothed over by a homogenized rendering of dialect into standardized English. In the novels, likewise, the reality of the labourer, the 'individualized Hodge' is lost through a distancing perspective. It is with reference to the times and settings of Hardy's novels that the voice of the workfolk should be read. This chapter has pointed to the significance of historical and topographical settings; furthermore, the fact that Hardy's novels are more specifically centred around public holidays allows for the voice of the workfolk to be rendered through carnivalesque questioning of hegemonic structures. The following chapter will explore the carnivalesque undercurrents in Hardy's fiction that undermine state authority and celebrate freedom, times of license and the subversion of legal officialdom.

¹³¹ G.W. Sherman, *The Pessimism of Thomas Hardy* (London: Associated University Presses, 1976), pp.227, 230

¹³² Ebbatson, *Hardy: The Margin of the Unexpressed*, p.137

THE TRAGIC REVERSAL AS CARNIVAL JUSTICE

Carnival is a time of festival celebration during which the rules governing the social hierarchy and normal behavioural codes are temporarily lifted, allowing for the undermining of the socio-political status quo. Carnival laughter is directed at official life and parodies and undermines existing societal structures through reversal rituals and carnivalesque folk humour. Hardy's awareness of this characteristic of Rabelaisian folk humour is reflected in his *Literary Notebook*. Here, he copied an excerpt from *Athenaeum* from 1884, which reflects Bakhtin's central philosophy about laughter, which is that it is 'directed at the same object as [...] seriousness'¹:

In certain temperaments the eternal incongruities between man's mind & the scheme of the universe produce no doubt, the pessimism of Schopenhauer and Novalis; but to other temperaments — to a Rabelais or Sterne for instance — the apprehension of them turns the cosmos into disorder, turns it into something like [a] boisterous joke.²

That Hardy integrated a comic outlook in his literary output has been recognized from the earliest critical text on his prose works, *The Art of Thomas Hardy* (1894), in which Lionel Johnson attempts to categorize them:

There seem to be three such groups: the *Tragic*, the *Idyllic*, and a third; for which I can find no name, until one word be discovered to express in combination the *comic*, the *ironic*, the *satiric*, the *romantic*, the *extravagant*; a spirit of mocking audacity, and of serious laughter, animating a Pantagruel of Psychology.³

Johnson's analysis points to the fact that Hardy's use of comedy does not merely serve as a contrast to tragic seriousness but, like Rabelaisian humour, contains a carnivalesque

¹ Mikhail Bakhtin, *Rabelais and his World*, translated by Hélène Iswolsky (Bloomington: Indiana University Press, 1984), p.88

² H.D. Traill, 'English Men of Letters,' *Athenaeum*, 18 November 1882, in Lennart A. Björk, ed., *The Literary Notebooks of Thomas Hardy*, vol. 1 (London: Macmillan, 1985), p.149

³ Lionel Johnson, *The Art of Thomas Hardy* (New York: Haskell House, 1973), p.37, cited by Aaron Matz, 'Terminal Satire and *Jude the Obscure*' in *English Literary History* 73 (2) 2006, pp.519-54, p.538

spirit that questions the existing hegemonic structure. More recent critical interpretations of Hardy's fiction have adopted Bakhtinian discourse to explore class conflict in his novels. Roger Ebbatson, George Wotton and Ronald Knowles, for example, have examined how this 'spirit of mocking audacity' is used to desacralize the Church and bourgeois marriage.⁴ In this chapter I will argue that the structural principal of the tragic fall is that of reversal, which can be effected through a carnivalesque social levelling. Hardy may have developed his concept of tragic reversal with reference to Voltaire. Hardy excerpted passages from T. B. Macaulay's *Critical and Historical Essays* (1879), fixating on Macaulay's titles for the French satirist: '*the great scoffer-mocker—Voltaire*'; '*the greatest puller-down, both of bad & good—Voltaire*.'⁵ I will argue that in the liberated atmosphere of carnival in Hardy's early tragic novels, *The Return of the Native* and *The Mayor of Casterbridge*, this carnivalesque spirit of mockery utilizes extra-legal forms of expression to enact a social levelling through popular justice.

As many commentators on the social role of carnival have noted, it functions as a 'safety valve,' staving off more direct expressions of discontent and thus fulfilling a deterrent social function.⁶ A carnivalesque spirit of mockery is not dangerously subversive when it can be contained within the realms of officially-sanctioned carnival times. Festival time was sanctioned in the nineteenth century during seasonal holidays associated with the agricultural calendar, such as Plough Monday, May Day and harvest-time.⁷ As Roger Sales concludes, 'the carnival spirit, in early nineteenth-century England [...] could [...] be a vehicle for social protest and the method for disciplining that protest.'⁸ Hardy's novels are frequently structured around seasonal holidays with the major events of his

⁴ George Wotton, *Towards a Materialist Criticism* (Totowa: Barnes & Noble; Gill and Macmillan, 1985), p.60-73; Roger Ebbatson, *Thomas Hardy: the Margin of the Unexpressed* (Sheffield: Sheffield Academic Press, 1993), pp.140-41; Ronald Knowles, 'Carnival and Tragedy in Thomas Hardy's Novels,' in *Thomas Hardy Journal* 21, 2005, pp.109-124, p.116

⁵ Aaron Matz, 'Terminal Satire and *Jude the Obscure*' in *English Literary History* 73(2), 2006, pp.519-47, p.521

⁶ Terry Eagleton, *Walter Benjamin: Towards a Revolutionary Criticism* (London: Verso, 1981), p.148, quoted by Peter Stallybrass and Allon White in *The Politics and Poetics of Transgression* (London: Methuen, 1986), p.13; Roger Sales, *English Literature in History 1780-1830* (New York: St. Martin's Press, 1983), p.169

⁷ Robert W. Malcolmson, *Popular Recreations in English Society 1700-1850* (Cambridge: Cambridge University Press, 1973), p.14

⁸ Sales, *English Literature in History*, p.169

first tragic novel *The Return of the Native* occurring on the officially-sanctioned celebration of November Fifth. In *The Return of the Native* and *The Mayor of Casterbridge*, Hardy explores how expressions of 'popular justice' in the form of effigy-burning and skimmington-riding can act as a foil to official justice. This form of expression is controllable when contained within the holidays; however, when carnival seeps out of its sanctioned and controlled atmosphere and infiltrates popular culture at large, it is much more subversive and can directly satirize and undermine legal practice.

The principal characteristic of carnival is that it turns the world upside-down and restructures it through laughter and inversion. In the spirit of mockery of official life it can parody official forms of justice. As outlined by John Parkin, carnival makes up its own version of the Law:

The category of folklore juridique, as parallel to official law, has long been discerned in the public denunciations, mocking gestures and defilements visited in guilty members of a community: especially noteworthy are the ancient traditions of the burning of effigies, charivari (a paramusical din created especially at night), and the ride on the ass (the victim often facing backwards).⁹

The expression of carnival rituals is morally conservative and, as Parkin notes, can act as a 'parallel to official law.' Furthermore, Karl Meuli states that

a closer analysis shows that what at first sight seemed to simply to be *rough* and wild acts of harassment are in truth well-defined traditional customs and legal forms, by means of which, from time immemorial, the ban and proscription were carried out.¹⁰

⁹ John Parkin, 'Rough Justice in Rabelais,' in James A. Coleman and Christine Scollen-Jimack ed., *Rabelais in Glasgow: Proceedings of the Colloquium Held At the University of Glasgow in December 1983* (Glasgow: University of Glasgow. Department of French, 1984), pp.125-43, p.127

¹⁰ Karl Meuli, *Gesammelte Schriften* (Basel-Stuttgart: Schwabe, 1975), p.473 quoted in Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005), p.72

Martin Ingram demonstrates this relationship, tracing a number of customs of popular justice to their counterparts in former legal punishments.¹¹ Popular justice in the nineteenth century continued to be inherently conservative, often adopting official modes of expression. As Sales notes,

although the world might appear to be turned upside down during the carnival season, the fact that Kings and Queens were chosen and crowned actually reaffirmed the status quo.¹²

In *The Return of the Native* and *The Mayor of Casterbridge*, Hardy employs expressions of popular justice that adopt the rites of official legal forms of punishment. The carnivalesque ritual of effigy-burning and the enactment of the skimmington-riding mirror official expressions of justice and thus consolidate the power of the Law.

As Hardy wrote his first tragic novel, *The Return of the Native* (1878), he chose to adopt the classical tragic structure of the unities of time, place and action.¹³ The key events of the novel take place on November Fifth and November Sixth of the following year. Chapter One has outlined the political significance of Hardy's choice of Guy Fawkes' Day in the 1840s as allowing for the carnivalesque expression of the economic plight of the rural labouring class on this day. However, notably, the celebration of working class culture is only expressed in the novel on November Fifth, an officially-sanctioned holiday, following the botched attempt to blow up Westminster Palace in 1605. The celebration of Guy Fawkes' Day on November Fifth was legally sanctioned immediately following the event and from then celebrated annually in commemoration of the deliverance of the king and country from Catholicism.¹⁴ The celebration became a political affirmation of the power of the civic authorities, which sentenced and executed Fawkes by hanging, drawing and quartering. Although November Fifth was not a public

¹¹ Martin Ingram, 'Ridings, Rough Music and Reform of Popular Culture in Early Modern England' in *Past and Present*, 105, 1984, pp.79-113 p.93

¹² Sales, *English literature in History*, p.169

¹³ Richard L. Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1, 1840-1892 (Oxford: Clarendon Press, 1978), p.61

¹⁴ 'An Acte for a publique Thancksgiving to Almighty God everie yeere of the Fifte day of November,' cited by Jim Etherington in *Lewes Bonfire Night* (Seaford: S.B. Publications, 1993), p.13

holiday from work, the working classes considered it their right to enjoy the entertainments characteristic of the ritual commemoration. In the nineteenth century, 'Guy Fawkes Night' celebrations descended into violence as bonfire gangs in small rural towns adopted the holiday and it became associated with radicalism. However, given the nature of the celebrations, they were met with a great measure of tolerance and continued for many years to be viewed as officially sanctioned carnival, for 'blowing off of steam.' A defence solicitor at the Assize Court following the 1847 disturbances in Lewes stated that the November Fifth celebrations were 'not what is ordinarily termed a riot, but was the keeping up of an old custom and might be regarded more as a frolic.'¹⁵ While bonfire gangs were increasingly subversive in their choice of targets for their burning of effigies, for the most part the ritual of effigy burning was conservative in expression, upholding official, legal and national sentiments. Effigies were made of famous local criminals who had been executed, such as Maria Manning¹⁶ and national enemies such as Napoleon Bonaparte.¹⁷ Ronald Hutton notes that

Mostly [...] targets were local people who had offended the community because of their religion or their morals; in this sense the bonfire celebrations merged with the old custom of the charivari.¹⁸

Henry Mayhew's contemporary account of Guy Fawkes Day celebrations attests to their carnivalesque nature and also to their moral conservatism:

Of late years [...] the character of Guy Fawkes-day has entirely changed. It seems now to partake rather of the nature of a London May-day. The figures have grown to be of gigantic stature, and whilst clowns, musicians, and dancers have got to accompany them in their travels through the streets, the traitor Fawkes seems to have been almost laid aside, and the festive occasion taken advantage of for

¹⁵ Etherington, *Lewes Bonfire Night*, p.16

¹⁶ Robert Storch, "'Please to Remember the Fifth of November': Conflict, Solidarity and Public Order in Southern England, 1815-1900" in Robert Storch ed., *Popular Culture and Custom in Nineteenth-Century England* (London: Croom Helm, 1982), pp.71-99, p.74

¹⁷ Christina Hole, 'Winter Bonfires' in *Folklore* 71(4), 1960, pp.217-227, p.219

¹⁸ Ronald Hutton, *Stations of the Sun: a History of the Ritual Year in Britain* (Oxford: Oxford University Press, 1997), p.399

the expression of any political feeling, the guy being made to represent any celebrity of the day who has for the moment offended against the opinions of the people.¹⁹

Thus, even when targets were local the burning in effigies of offenders was still a conservative expression upholding a community-based moral code expressed in the form of carnival justice.

The death of Eustacia as the climax of the action of *The Return of the Native* may be read as a vigilante expression of moral disapprobation, characteristic of nineteenth-century November Fifth carnivalesque bonfire celebrations.²⁰ The treatment of Eustacia is suggestive of community justice against those who flouted conventional community standards of behaviour, which Storch demonstrates was carried out ritually on November Fifth. The community's judgment of Eustacia as a witch is also based on her breaching traditional gender restraints. Her indulgence in the mumming play involves her inverting traditional courtship as she uses the occasion to pursue Clym Yeobright, an adventure which is met with censure from her grandfather, who otherwise tolerates her whims. She is then suspected by the Egdonites, in particular, her mother-in-law, of having had an affair with Wildeve. This follows a pattern of primitive community forms of justice; Sara Malton notes that the castigation and social control over Eustacia has its origins in gossip²¹ and James Scott identifies the next stage following gossip as witchcraft.²² Malton demonstrates society's role in constructing Eustacia's identity and thus contributing her death:

Deemed a witch, a temptress, and even a murderess by the voice of the social "every-body," Eustacia is liable to the terms of such judgment, the consequences of which are most obviously literalized in her suicide by drowning.²³

¹⁹ Henry Mayhew, *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*, vol. 3 (New York: Dover, 1968), p.64

²⁰ Malcolmson, *Popular Recreations*, p.73

²¹ Sara A. Malton, "'The Woman Shall Bear Her Iniquity': Death as Social Discipline in Thomas Hardy's *The Return of the Native*" in *Studies in the Novel* 32(2), 2000, pp.147-64, p.150

²² James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), p.143

²³ Malton, "'The Woman Shall Bear her Iniquity,'" p.147

Following the failure of gossip to drive Eustacia from Egdon, this community judgment is symbolically expressed in an effigy-burning ritual, which in addition to being a seasonal form of popular justice is also an ancient ritual form of revenge.²⁴ The immediate cause for the effigy burning is the illness of Susan Nunsuch's son, but it is suggested that Eustacia has 'bewitched' Johnny Nunsuch (*RN*, p.325). In the belief that Eustacia is a witch whose presence makes her son ill, Susan Nunsuch carefully fashions an effigy, dressed in Eustacia's customary hairband and strapped shoes. She pierces it throughout with pins and burns it as a voodoo doll on a bonfire in the manner of a November Fifth effigy burning. Given the symbolism of the November Fifth effigy burning as a vigilante expression of moral disapprobation, Eustacia's 'death-by-bonfire' scene is strikingly appropriate. The cultural context of November Fifth suggests that Eustacia's death is not merely a suicide but a result of an extra-legal indictment and metaphorical execution. The voice of the community is allowed expression during the time of carnival and its celebration of November Fifth in *The Return of the Native* provides the occasion for the expulsion of an outside offender through a ritual expression of community justice. Through the enactment of this ritual punishment, the narrative of *The Return of the Native* shows the permeation of destructive social attitudes, which John Stuart Mill identifies as restricting personal liberty:

Protection [...] against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own.²⁵

As argued by Sara Malton, the death of Eustacia should be read as a community-sanctioned punishment, even though it is ultimately enacted by one person. In Hardy's

²⁴ Ruth Firor, *Folkways in Thomas Hardy* (New York: A.S. Barnes, 1962), p.92

²⁵ John Stuart Mill, 'On Liberty' in *The Basic Writings of John Stuart Mill: On Liberty, The Subjection of Women and Utilitarianism* (New York: The Modern Library, 2002), pp.3-119, p.7

second tragic novel, *The Mayor of Casterbridge*, the ritual of skimmington-riding fulfils the same purpose as the effigy burning does in *The Return of the Native*.²⁶ Skimmington-riding was similarly a plebeian way of controlling and punishing anti-social behaviour. It was an expression of moral disapproval of an action that is not punishable by official forms of justice. It was however, seen as a substitute for legal forms of punishment; Underdown states that 'if the magistrates failed, or were not required to act, neighbours were always ready to uphold morality and patriarchy.'²⁷ The ritual of the skimmington-riding targeted women who were deemed to be a 'scold' but more often was directed towards those who were rumoured to be guilty of a violation of marital laws, whether for domestic violence or adultery.²⁸ On Jopp's revelation to the frequenters of Peters' Finger Inn that Henchard and Lucetta had a relationship prior to their respective marital partners, Susan and Donald Farfrae, Nance Mockridge and Mother Cuxsom see the scandal as a 'good foundation for a skimmity-ride' (*MC*, p.264). It is thus as morally conservative as the effigy burning of Eustacia, but furthermore, it is fuelled by a strong undercurrent of class-consciousness.

While the role of the skimmington riding was usually to expose and disgrace those involved in unconventional relationships, the ritual in *The Mayor of Casterbridge* is not only related to sexual immorality. The skimmington-riding is not staged immediately following the courtroom scene, in which Henchard's more shocking secret of the wife sale is revealed. As Michael Millgate notes, the skimmington-riding 'has its roots in that more generalized class hostility already evident among the crowd outside the King's Arms.'²⁹ In *The Mayor of Casterbridge* the skimmington-riding ritual is a collective effort, motivated by envy and class-consciousness. As it is directed toward the current and former mayors of Casterbridge it involves the inversion of the hierarchical order; the mayor of the town is under attack, not just a profligate female.

²⁶ E.P. Thompson, 'Rough Music Reconsidered,' in *Folklore* 103(1), 1992, pp.3-26, pp.4, 7

²⁷ David Underdown, *Revel, Riot and Rebellion: Popular Politics and Culture in England 1603-1660* (Oxford: Oxford University Press, 1987), p.100

²⁸ Thompson, 'Rough Music Reconsidered,' p.12

²⁹ Michael Millgate, *Thomas Hardy: his Career as a Novelist* (London: Macmillan, 1994), p.224

In *The Mayor of Casterbridge*, the first scene that takes place in Casterbridge is an official feast at the King's Arms at which Henchard presides at the height of his prosperity as mayor. Traditionally, feasts were all-inclusive celebrations of seasonal events, such as harvest time.³⁰ Feasting became a celebration and affirmation of official authority, which is reflected in the hierarchically-arranged seating in the Casterbridge celebration, described as "a great public dinner of the gentle-people and such like leading folk — wi' the Mayor in the chair" (*MC*, p.63). At the King's Arms feast there is a symbolic spatial rendering of class-based difference. The windows of the King's Arms represent a class boundary; an onlooker notes: "As we plainer fellows bain't invited, they leave the window-shutters open that we may get jist a sense o't out here" (*MC*, p.63). However, the permeability of the King's Arms renders it susceptible to the infiltration of the spirit of carnival from the town square. Heckling at the feast is a class-based direct attack on Henchard as the workfolk question him about the 'growed wheat' (*MC*, p.61) that is resulting in poor quality bread for the disgruntled residents of Casterbridge. The immediate trigger for the question about the bad bread is Henchard's self-assurance, as, his voice rising above the others, he tells a story of his past hay-dealing in which he outwitted a rival. His immediate audience within the King's Arms responds accordingly with appreciation of Henchard's self-proclaimed sagacity, but a new voice speaks up confronting Henchard with his public duty to provide the community with good bread.

It came from the lower end of the table, where there sat a group of minor tradesmen who, although part of the company, appeared to be a little below the social level of the others; and who seemed to nourish a certain independence of opinion and carry on discussions not quite in harmony with those at the head [...]. This interruption about the bad bread afforded infinite satisfaction to the loungers outside, several of whom were in the mood which finds its pleasure in others' discomfiture; and hence they echoed pretty freely, "Hey! How about the bad bread, Mr. Mayor?" Moreover, *feeling none of the restraints of those who shared the feast*, they could afford to add, "You rather ought to tell the story o' that, sir!" (*MC*, p.67, emphasis added).

³⁰ Bakhtin, *Rabelais and his World*, p.10

While Henchard sees the occasion as a celebration of his official position, the Casterbridge community use it as an occasion for the carnivalesque questioning, breaking of class boundaries and undermining of Henchard's authority. There are thus two conflicting atmospheres at the King's Arms feast which reflects Bakhtin's contrasting definitions of feast and carnival:

The suspension of all hierarchical precedence during carnival time was of particular significance. Rank was especially evident during official feasts; everyone was expected to appear in the full regalia of his calling, rank and merits and to take the place corresponding to his position. It was a consecration of inequality. On the contrary, all were considered equal during carnival. Here, in the town square, a special form of free and familiar contact reigned among people who were usually divided by barriers of cast, property, profession and age.³¹

While Henchard presides over the feast in full mayoral regalia, a carnival spirit also presides, which, by contrast, involves the 'suspension of all hierarchical rank, privileges, norms and prohibitions.'³² The group of minor tradesmen is removed from the feast both in terms of space and spirit. Their 'pantomimic laughter' (*MC*, p.70) is contrasted with the mayor's laugh, through which the narrator characterizes Henchard:

That laugh was not encouraging to strangers, and hence it may have been well that it was rarely heard. Many theories might have been built upon it. It fell in well with conjectures of a temperament which would have no pity for weakness, but would be ready to yield ungrudging admiration to greatness and strength. Its producer's personal goodness, if he had any, would be of a very fitful cast—an occasional almost oppressive generosity rather than a mild and constant kindness (*MC*, p.64).

The contrast between official and carnival atmospheres is furthermore emphasized by the influence of alcohol taking hold of the minor businessmen of Casterbridge, which is contrasted with Henchard's sobriety. Henchard is visibly in a different atmosphere: 'Only

³¹ *Ibid*, p.10

³² *Ibid*, p.10

Henchard did not conform to these flexuous changes; he remained stately and vertical, silently thinking' (*MC*, p.70) in contrast to the tradesmen whose recourse to alcohol frees them from hegemonic constraints.³³

The Corporation, private residents, and major and minor tradesmen had, in fact, gone in for comforting beverages to such an extent that they had quite forgotten, not only the Mayor, but all those vast political, religious, and social differences which they felt necessary to maintain in the daytime, and which separated them like iron grills (*MC*, p.71).

Although feasting is traditionally a communal celebration associated with agrarian cyclical time, for example, celebration of harvest, the Casterbridge harvest has failed and the leading corn merchant is held responsible. The communal celebration is thus fractured; there are two conflicting atmospheres at the banquet, resulting in heightened class tensions and discord. In contrast with the official tone of the feast, the carnival atmosphere of the marketplace outside the King's Arms allows for the airing of grievances over the poor quality of bread resulting from the bad harvest. Furthermore, the hostility is exacerbated by the fact that Henchard is a Protectionist serving his interests by maintaining a tax on corn. The history of the King's Arms is significantly imbued with class issues related to the Corn Laws. As noted in Chapter One, the King's Arms was a meeting-place at which John Bright garnered much support during his campaign against the Corn Laws.³⁴ The Corn Law tariff favoured the minority, while the majority, in favour of Free Trade, suffered keenly from the resultant expense of bread, but lacked the political power to overturn the Corn Laws. Having no official recourse to the Law, they took recourse in popular justice in the form of the skimmington-ritual, which was sometimes used for political ends. M.J. George cites the skimmington-riding as a conduit for political expression, such as anti-Corn Law demonstrations:

Perhaps not unimportant was the way in which the ideas of inversion, misrule, and ridicule inherent in the punishment

³³ *Ibid*, p.286

³⁴ George Macaulay Trevelyan, *The Life of John Bright* (London: Routledge, 1993), p.96

increasingly came to be used as a vehicle for the expression of popular dissent against authority in general. Hence, for instance, in the many risings that took place in the 18th century and into the 19th century over the price of bread and in other demonstrations against authority figures, a mocking of those authorities utilized elements of the Skimmington.³⁵

The enactment of the skimmington-riding ritual is fuelled by the desire of the rebellious underclass locals to undermine Henchard's official authority. On hearing that Farfrae is to set up as a corn and hay merchant in a rival business, Henchard raves at the town-pump to the local business-men, but his anger meets with little response as with his loss of prosperity comes a loss of moral support:

His friends of the Corporation did not specially respond. Henchard was less popular now than he had been when nearly two years before, they had voted him to the chief magistracy on account of his amazing energy. While they had collectively profited by this quality of the corn-factor's they had been made to wince individually on more than one occasion (*MC*, p.135).

Although it is not the tradesmen of Casterbridge who organize the skimmington-riding, it seems that the same spirit pervades the perpetrators. It is a form of class revenge motivated through envy at Henchard and Lucetta's rise in social class. Vigar notes that Lucetta is set up for a fall in her preoccupation with new clothes before the event, and relates the denunciation of her as a 'proud piece of silk and waxwork' to the effigy for which this description fits in the skimmington-riding.³⁶ When organizing the skimmington-riding, which exposes the former intimacy between Henchard and Lucetta, who is newly-married to Farfrae, Jopp observes that 'the hit will be all the more pat by reason of their great elevation to-day' (*MC*, p.274). Following Lucetta's death, Henchard reflects on the skimmington and, apart from not knowing of the element of personal revenge in Jopp's involvement, he gives an accurate assessment of the motivation behind it:

³⁵ M.J. George, 'Skimmington Revisited,' *Journal of Men's Studies* 10(2), 2002, pp.111-27 p.121

³⁶ Penelope Vigar, *The Novels of Thomas Hardy: Illusion and Reality* (London: Athlone Press, 1974), pp.162-63

The tempting prospect of putting to the blush people who stand at the head of affairs — that supreme and piquant enjoyment of those who writhe under the heel of the same — had alone animated them, so far as he could see; for he knew nothing of Jopp's incitements (*MC*, p.303).

The skimmington-riding is fuelled by class envy and also the lower class's desire to expose which is motivated by the middle class's efforts toward concealment. Henchard's relationship with Lucetta would not have shocked the prostitutes of Mixen Lane who feign moral indignation (*MC*, p.266). It is the adoption of official roles and the implied moral elevation Henchard and Lucetta work so hard to maintain in appearance that rancours with the community and raises the desire to expose them. The naming of Nance Mockridge, who first suggests the skimmington-ride, points to the spirit of mockery behind the enactment of the ritual. Bakhtin points to this natural desire to undermine and expose authority figures through comedy: 'Seriousness had an official tone and was treated like all that is official. It oppressed, frightened, bound, lied, and wore the mask of hypocrisy.'³⁷

Hypocrisy and its exposition are central to the narrative of *The Mayor of Casterbridge* and this is represented in a symbolic mask that forms the keystone of High-Place Hall.

Originally the mask had exhibited a comic leer, as could still be discerned; but generations of Casterbridge boys had thrown stones at the mask, aiming at its open mouth; and the blows thereon had chipped off the lips and jaws as if they had been eaten away by disease (*MC*, p.160).

Suzanne Keen's analysis of the novel succinctly expresses the layered symbolism of the keystone mask: 'This gruesome syphilitic sentinel reiterates the connection of sexuality (the leer; disease), bloodsports (stoning), and acting (the comic mask) in the zone it guards.'³⁸ That the comic leer has been stripped away to form a tragic open mouth like

³⁷ Bakhtin, *Rabelais and his World*, p.94

³⁸ Suzanne Keen, *Victorian Renovations of the Novel: Narrative Annexes and the Boundaries of Representation* (Cambridge: Cambridge University Press, 1998), p.136

that of Oedipus, symbolizes the carnivalesque ritual of the skimmington, a comic performance of street theatre which results in the death of Lucetta. The defaced mask not only represents the co-existence of tragic and comic modes in the novel, it also represents a carnivalesque attack on the new middle class arrival who inhabits High-Place Hall and rises in society to become the mayor's wife. Thus the leering mask over the back door of High-Place Hall is a pertinent image for the novel's thematic concerns with concealment, observation, exposure and reversal.

In the skimmington-riding, the mayoral figure is reduced to mere clothing for the purpose of mockery. This ritual is similar to the trope of the 'Lord of Misrule,' or carnival king, through which 'the king's attributes are turned up-side-down in the clown.'³⁹

The clown was first disguised as a king, but once his reign had come to an end his costume was changed, 'travestied,' to turn him once more into a clown. The abuse and thrashing are equivalent to a change of costume, to a metamorphosis. Abuse reveals the other, true face of the abused, it tears off his disguise and mask. It is the king's uncrowning.⁴⁰

This trope symbolically expresses the rise and fall pattern of tragedy and points to the temporal quality of authority which is dependant on the community's sanction:

In such a system the king is the clown. He is elected by all the people and is mocked by all the people. He is abused and beaten when the time of his reign is over, just as the carnival dummy of winter or of the dying year is mocked, beaten, torn to pieces, burned, or drowned even in our time.⁴¹

The skimmington-riding is an unmasking of Henchard's constructed identity by the community to reveal his concealed past. However, Henchard partakes in this symbolic uncrowning as he himself adopts the role of the carnival king in adopting his old clothing

³⁹ Bakhtin, *Rabelais and his World*, p.370

⁴⁰ *Ibid*, p.197

⁴¹ *Ibid*, p.370

after his fall in social esteem. Henchard's release from his self-imposed twenty-one-year embargo on alcohol neatly coincides with the arrival of the royal visitor. This draws upon a contemporary rural town ritual, which may even have been known by Hardy:

Sometimes festive occasions were employed for insulting authority by means of a traditional 'mock mayor' ceremony. At Middleton, for instance, a custom of this sort was observed during the Easter holidays: a drunken man was dressed in ludicrous clothes and chaired through the streets at night as the 'Lord Mayor of Middleton.'⁴²

Henchard asks to be included in the occasion of greeting the royal visitor 'in clothes of frayed and threadbare shabbiness, the very clothes which he had used to wear in the primal days when he had sat among them' (*MC*, p.268). Henchard introduces the carnivalesque trope into an official ceremony in Casterbridge, organized by Farfrae in his new position as mayor. This occasion of reversal is significantly bound up with an official role of authority, the transition in mayoralty from Henchard to Farfrae and concomitant socio-economic degradation. Following the scandalous exposure of Henchard's past he is reduced to his former position as a hay-trusser. This visible display of his social degeneration in the adoption of the role of carnival king is a form of self-chastisement but also emphasizes that his tragic reversal is related to a fall in social class.

Although the reversal in Henchard's fortunes is primarily the result of a carnivalesque attack, it is significant that Henchard also partakes in his own loss of social standing through his lack of resistance and a degree of complicity. Thus, he mocks the position he loses and also becomes a levelling social symbol removing strict class differentiation and the assumptions regarding respectability that pertain to middle-class status.

Contemporary theory suggested that crime and immorality were the sole preserve of the working classes. In an address to the Select Committee of 1816, Patrick Colquhoun outlined his theory on the increase in crime and immorality:

⁴² Malcolmson, *Popular Recreations*, p.81

With regard to the middling classes, their morals are unexceptionable; those above poverty may be considered as stationary, and generally good; with regard to the lowest rank of society, I think there has been a progressive retrograde from the commencement of the revolutionary French war, particularly in all large towns, in the course of the last twenty-four years.⁴³

Colquhoun categorized seven gradations of class, of which the sixth constituted the labouring class proper, working mechanics, artisans and others in agricultural and various employments, including menials' and the seventh and lowest class comprised 'paupers and their families, Vagrants, Gypsies, Rogues, Vagabonds, and idle and disorderly persons, supported by criminal delinquency.'⁴⁴

William Greenslade records that a proliferation of social studies of urban destitution in the 1840s and 1850s linked crime with chronic poverty.⁴⁵ Greenslade argues that Hardy contributes to this social debate in the 1880s, stating that the landscape of *The Mayor of Casterbridge*:

is a landscape shaped by a construction of difference; by a magnification of divisions between the normative and the 'other', marking out boundaries between the healthy and the polluted, the respectable and the disreputable, between the official and the subversive class formations and social groups, and the prospect of these boundaries being transgressed. Such meanings shape Hardy's representation of the social space of 'Casterbridge,' his *urbs in rure*.⁴⁶

The narrative of *The Mayor of Casterbridge* serves to undermine such clear-cut notions of the relationship between poverty and crime, highlighting that the middle class was also guilty of moral misdemeanours and criminal activities. Concealed crime in the novel is

⁴³ 'Report from the Committee on the State of the Police of the Metropolis,' 510 *Parl. Papers* (1816), vol. 5, p.1. Minutes of Evidence, Evidence of Patrick Colquhoun, pp.32-36, p.33, cited by Leon Radzinowicz in *A History of English Criminal Law and Its Administration From 1750*, vol. 3 (London: Stevens and Son, 1956), p.23

⁴⁴ Radzinowicz, *A History of English Criminal Law and Its Administration From 1750*, vol. 3, p.239

⁴⁵ William Greenslade, *Degeneration, Culture, and the Novel, 1880-1940* (Cambridge: Cambridge University Press, 1994), p.47

⁴⁶ *Ibid*, p.54

not confined to the urban slum of Mixen Lane, but is also associated with the middle class. This blurring of boundaries is rendered spatially in the liminal space of High-Place Hall.

Like the King's Arms, Lucetta's residence of High-Place Hall is, as its name suggests, imbued with class issues; the narrator describes it as 'not altogether aristocratic, still less consequential' adding 'yet the old-fashioned stranger instinctively said "Blood built it, and Wealth enjoys it"' (*MC*, p.159). As Jeremy Hooker notes, the leering mask over the door of High-Place Hall also signifies class issues: 'the mask symbolizes a cruel and barbarous history, in which the wealthy have been implicated with the poor.'⁴⁷ Architecturally, the front façade of High-Place Hall is 'an example of dignity' (*MC*, p.159) but the rear space of the building is associated with concealed criminality:

The position of the queer old door and the odd presence of the leering mask suggested one thing above all others as appertaining to the mansion's past history — intrigue. By the alley it had been possible to come unseen from all sorts of quarters in the town — the old play-house, the old bull-stake the old cock-pit, the pool wherein nameless infants had been used to disappear. High-Place Hall could boast of its conveniences undoubtedly (*MC*, pp.160-61).

The description of High-Place Hall, with its respectable front concealing its criminal associations, points to the very blurring of class boundaries with which the novel is concerned. Henchard's former lover, Lucetta, takes up residence in High-Place Hall, her identity concealed under the disguised name of Lucetta Templeman. Penelope Vigar notes that

obviously, Hardy intended that this house, with its passable front and its sordidly secret back entrance, should be suggestive of Lucetta's own life with its discreetly veiled but dubious past.⁴⁸

⁴⁷ Jeremy Hooker, *Writers in a Landscape* (Cardiff: University of Wales Press, 1996), p.118

⁴⁸ Vigar, *The Novels of Thomas Hardy*, p.151

Lucetta is only the victim of the more widespread covertness in Casterbridge; the mask over her property not only bespeaks her duplicity but that of the mayor, Henchard. Through exposing and undermining the authority figures of the novel – the sexually illicit activity of Henchard the former mayor and Farfrae as dupe husband and new mayor – the narrative exposes the fallibility of individuals who have arbitrarily been granted authority in Casterbridge and are morally no better than the residents of Mixen Lane.

Henchard's reversal is represented spatially and through his unwitting criminal actions, which raises topical contemporary issues regarding criminality and class. After Henchard's fall from prosperity the narrative associates him with criminality on his downward trajectory. As noted by Dalziel, 'the frequency with which Hardy's characters slide up and down the social scale suggests a certain fluidity of class categorization.'⁴⁹ With the new commercial opportunities of the increasingly industrial era class boundaries in *The Mayor of Casterbridge* are fluid and likewise, as critics have noted, the boundaries of Casterbridge and Mixen Lane are permeable.⁵⁰ Both concealed criminality and the blurring of class boundaries are epitomized in the character of Henchard who fluctuates between classes. This is depicted within the context of physical spaces in the novel. Bullen notes that

Perhaps more than with any other character, Henchard's rise and fall is mirrored by his various dwellings [...]; his downward path through Casterbridge is marked by a whole series of dwellings.⁵¹

Henchard removes from the town to live at the Mixen Lane end of town in Durnover Barton, which Denys Kay Robinson locates in Fordington.⁵² Henchard's relocation to the

⁴⁹ Pamela Dalziel, 'Whatever Happened to Elizabeth Jane?: Revisioning Gender in *The Mayor of Casterbridge* in Phillip Mallett, ed., *Thomas Hardy: Texts and Contexts* (Basingstoke: Macmillan, 2002), pp.64-86, p.82

⁵⁰ Francis B. Pinion, *Thomas Hardy, Art and Thought* (London: Macmillan, 1977) p.104; Marjorie Garson, 'The Mayor of Casterbridge: the Bounds of Propriety' in Julian Wolfreys, ed., *The Mayor of Casterbridge: Contemporary Critical Essays* (London: Macmillan, 2000), pp.80-115; Keen, *Victorian Renovations of the Novel*, p.133

⁵¹ J.B. Bullen, *'The Expressive Eye': Fiction and Perception in the Work of Thomas Hardy* (Oxford: Clarendon Press, 1986), p.160

⁵² Denys Kay Robinson, *Hardy's Wessex Re-Appraised* (Newton Abbot: David and Charles, 1972), p.26

criminal area of town is the culmination of associations made between Henchard and sites of criminal activities in the novel. Just as spaces in the novel, such as the back of High-Place Hall, reflect blurred boundaries regarding class and crime, a number of activities were criminalised but yet still practiced in the early nineteenth century.

The scene in which Henchard wrestles with a bull may seem an incongruous episode in the novel, but considering the cultural significance of bull-baiting at this time, it serves to highlight the unwitting criminality of Henchard. In the early nineteenth century, official control over popular recreation included the criminalization of bull-baiting. Attempts at suppression are recorded from the 1770s on the grounds that it was a disturbance of the peace.⁵³ The suppression of bull-baiting became a site of contention between magistrates and the populace as the latter claimed the sport as a 'lawful ancient custom' which, though it could not be validated by a legal document, was sanctioned by the usage (it was claimed) of some 600 years.⁵⁴ Magistrates were reluctant to intervene in organized bull-running events, anticipating 'very serious disturbance.'⁵⁵ Ultimately though, a vigorous campaign against the sport included

prosecutions, convictions, sermons, journalistic attacks, personal interventions by clergymen and magistrates; and during the 1830s, especially after a strong legal leverage was provided through the Cruelty to Animals Act of 1835, there was a final wave of charges (and normally convictions) against bull-baiters, many of which were actively supported or initiated by the Animals' Friends Society.⁵⁶

In 1835, bull-baiting and bull-running were criminalized under the Cruelty to Animals Act and the penalty recorded in *The Justice's Manual* of 1865:

Keeping or using any room, &c., for baiting or fighting any bull, bear, badger dog, cock, or other animal, (domestic or

⁵³ *Aris's Birmingham Gazette*, 10 July 1777, quoted in Douglas A. Reid, 'Interpreting the Festival Calendar: Wakes and Fairs as Carnivals' in Robert Storch ed., *Popular Culture*, pp.125-153, p.130

⁵⁴ Malcolmson, *Popular Recreations*, p.111

⁵⁵ *Ibid*, p.111

⁵⁶ *Ibid*, pp.125-6

wild) – Penalty, not exceeding five pounds; and encouraging or assisting at the fighting or baiting of any bull, bear, badger, dog, cock, or other animal “as aforesaid,” the like penalty.⁵⁷

Nevertheless, the sport still continued illegally, with bull-baitings recorded as late as 1853.⁵⁸ Therefore, although the bull-wrestling incident in the novel is not an organized event, the impromptu ‘bull-baiting’ would have been illegal in the novel’s time setting of the 1840s. It seems likely that the allusion to the recently criminalized sport was intentional for the contemporary reader.

The bull-wrestling scene in *The Mayor of Casterbridge* shares the features of an official bull-baiting scene. *Chamber’s Book of Days* records that the ritual ended with the bull tied by his horns to a stake with an iron ring in it, situated in the centre of the ring.⁵⁹ Bull-baiting usually took place in a publican’s yard, an accessible open space or a market place.⁶⁰ In *The Mayor of Casterbridge*, the large square called the Bull Stake marketplace, overlooked by High-Place Hall, has a surviving stone post ‘to which the oxen had formerly been tied for baiting with dogs to make them tender before they were killed in the adjoining shambles’ (MC, p.205). The narrator adds to this description the note that, ‘In a corner stood the stocks’ (MC, p.205) which augments the association of the place with criminality and also with the character of Henchard, whom Susan imagines to be in the stocks on her return to Casterbridge (MC, p.65). The scene in which Henchard subdues the bull takes place outside of its conventional location, outside of Casterbridge itself, on the road to Port-Bredy, and is more characteristic of bull-running, than bull-baiting. Bull-running was the capture of the bull without dogs; as described by Malcolmson, it was

⁵⁷ Samuel Stone, *The Justices’ Manual, or, Guide to the Ordinary Duties of a Justice of the Peace: with an Appendix of Forms, and Table of Punishments*. 11th ed. (London: British Law: Administration of Justice, 1865), p.134

⁵⁸ *Notes and Queries*, Series VI, vol. 1, pp.86, 105, 186

⁵⁹ *Chamber’s Book of Days: a miscellany of popular antiquities in connection with the calendar, including anecdote, biography & history, curiosities of literature and oddities of human life and character*, <http://www.thebookofdays.com/months/july/14.htm>, accessed on 25 June 2007

⁶⁰ Malcolmson, *Popular Recreations*, p.46

essentially a free-for-all bull-fight without weapons, or at best with only sticks and heavy staffs; it seems to have been much like some of the bull-runnings recently (or still) found in parts of France and Spain, and it was characterized by a similar sort of carnival.⁶¹

The scene in which Henchard wrestles and subdues a bull has the celebratory carnivalesque atmosphere of the traditional sporting event to which the narrator relates it:

In the main the animals would have walked along quietly enough; but the Casterbridge tradition was that to drive stock it was indispensable that hideous cries, coupled with Yahoo antics and gestures, should be used, large sticks flourished, stray dogs called in, and in general everything done that was likely to infuriate the viciously disposed and terrify the mild (*MC*, p.217).

The addition of dogs to rile the bull and spectators engaging in wild behaviour recreates the atmosphere of a bull-baiting to set a scene in which Henchard engages in the final act of violently wrenching the bull's head by the staff attached to the ring in his nose. The scene also serves as a symbol of Henchard's character; both practical jesters are brought to submission, their joking being read as signifying more sinister behaviour (*MC*, p.219). Henchard's heroic effort, rather than being rewarded by the hand of the woman he saved, results in his learning that Lucetta married Farfrae and jilted Henchard as a consequence of this former 'criminal' act, as she learned of his past selling of his wife Susan. The scene takes place as the tragic narrative convention of *peripeteia* and is accompanied by a carnivalesque display characteristic of class reversal which renders boundaries between the criminal proletariat and the ruling classes indistinct. This is frequently rendered spatially in the novel, as epitomised in the criminal associations with High-Place Hall with which Henchard is associated.

Henchard's re-union with his wife Susan, earlier in the novel is also coloured with allusion to a site of criminality. Having given the historical backdrop of execution associated with Maumbury Ring, the narrator refers to modern activities of a criminal

⁶¹ *Ibid*, p.47

nature, 'pugilistic encounters', which were illicit and hidden in the Ring. The association of Henchard with Maumbury Ring is a proleptic allusion to the scene in which Henchard wrestles with Farfrae. Prior to writing *The Mayor of Casterbridge*, Hardy was engaged in collecting newspaper articles from the 1820s. Greenslade identifies an excerpt in Hardy's 'Facts' notebook from the *Dorset County Chronicle* from 1829 as a likely source for the wrestling scene in *The Mayor of Casterbridge*.⁶² Greenslade emphasizes the similarities in Hardy's description of the wrestling scene and that recorded in the notebook, based on the resemblances between the description of the rallies and their similar mild homoerotic undercurrents.⁶³ Elsewhere in Hardy's 'Facts' notebook, his notes on wrestling reflect the increasing emphasis toward regulating the sport. An excerpt transcribed in this notebook shortly afterwards refers to the barbarity of unregulated pugilism: 'Kicking at a wrestling match — a barbarous practice...The bare foot, or thin pump only shd be used: padding the legs wd. then be uncalled for.'⁶⁴ In his 'Facts' notebook, Hardy records three cases of fatal pugilism that occurred in 1826; in only one case was there a verdict recorded of 'justifiable homicide' which suggests that frequently there was no clear distinction in cases of pugilism whether the death was accidental or homicide.⁶⁵ In September 1845, the prize-ring remained well-supported, despite the efforts of magistrates and police.⁶⁶ Within the time frame of the novel, bare-knuckle wrestling was not illegal but that fatal results were increasingly difficult to determine from manslaughter led to increased regulations over the sport, which were codified by the Pugilists' Benevolent Association in 1866.⁶⁷

The fight in the corn-loft between Henchard and Farfrae is precipitated in the novel by the brief, antagonistic physical contact that takes place at the celebration of the Royal visit. Henchard tells his rival that he has withstood his rivalry and snubbing, but he views the 'hustling' as a personal affront which has disgraced him and as the basis of an indefinite threat (*MC*, p.277). When Farfrae then states that he suppressed Henchard's

⁶² William Greenslade, ed., *Thomas Hardy's 'Facts' Notebook: a critical edition* (Aldershot: Ashgate, 2003), 106d, pp.159-60

⁶³ *Ibid*, 106d, pp.159-60

⁶⁴ *Ibid*, 108b p.162

⁶⁵ *Ibid*, 29b, 45f, 50e, pp.45, 70, 77-8

⁶⁶ Donald Thomas, *The Victorian Underworld* (London: John Murray Ltd., 2003), p.195

⁶⁷ *Ibid*, p.198

actions at the celebration through his duty as chief magistrate, Henchard challenges Farfrae to illegally fight in a hidden venue:

“Here be we, in this four-foot square loft, to finish out that little wrestle you began this morning. There’s the door, forty foot above ground. One of us two puts the other out by that door — the master stays inside. If he likes he may go down afterwards and give the alarm that the other has fallen out by accident — or he may tell the truth — that’s his business” (*MC*, p.278).

Henchard’s mensuration skills, which he lacks for corn-related matters, are ready to hand for assessing the venue for their wrestling contest. The narrator defends Farfrae’s character as chief magistrate in this scene, as he notes that Farfrae had no time to do anything but defend himself in closing with Henchard (*MC*, p.278). Even though Henchard stops short of murdering Farfrae, as was his intention, his awareness of the illegality of fighting in this manner is reflected in his instruction to Farfrae to have him arrested (*MC*, p.279). *The Justice’s Manual* (1865) records that

All persons present at a prize fight [...] are principals in the breach of peace, and indictable for a misdemeanour [...] and it is the duty of magistrates to cause the intended combatants to be brought before them, and to bind them over to keep the peace till the next assize or sessions.⁶⁸

Henchard’s self-identification as criminal at this point, when he ‘[takes] his full measure of shame and self-reproach’ (*MC*, p.279) serves to undermine contemporary theory regarding class and criminality. That the tragic fall is also a carnival reversal highlights issues of class and equality. In the tradition of carnival, the narrative of *The Mayor of Casterbridge* removes all class distinctions, placing all classes on an equal moral level.

The release of class tensions permissible during carnival came under increasing control in the nineteenth century, as it became an increasingly violent manifestation of discontent against the authorities. When November Fifth developed into riotous displays of radical

⁶⁸ Stone, *The Justices’ Manual*, 11th ed., p.401

discontent in the 1830s, local police forces backed by special constables were drafted in for the occasion to clear the streets of bonfires and reduce the size of crowds.⁶⁹ Guy Fawkes' disturbances resulted in numerous arrests and transportations, such as those Hardy recorded in his 'Facts' Notebook.⁷⁰ Included among 'Various Nuisances' in Stone's *Justice's Manual*, are those who partake in activities associated with Guy Fawkes' Night, including anyone who 'wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any (c) firework.'⁷¹ By 1885, offenders were liable to a fine not exceeding 40s. or imprisonment not exceeding 14 days, at the discretion of the justice trying the case.⁷² Control over Guy Fawkes's Night celebrations was regained as the authorities replaced unofficial festivities with organized events that incorporated ritual expressions, such as bonfires and fireworks.⁷³ The skimmington-riding was more difficult for the authorities to suppress. Longways's statement that "'Tis too rough a joke, and apt to wake riots in towns" (MC, p.273) reflects the contemporary threat of violence that accompanied the staging of a skimmington-riding. It was clearly not unusual for the intervention of the authorities in the event of a skimmington-riding, such as belatedly occurs in *The Mayor of Casterbridge*. Efforts toward suppression on the grounds that it occasioned public disorder culminated in the criminalization of the skimmington-riding under the 1882 Highway Act.⁷⁴ Initially confined primarily to seasonal or festive occasions,⁷⁵ skimmington-riding became an underground festive occasion coordinated in public houses⁷⁶ that was enacted in immediate response to the event or a rumour, which occasioned it. Skimmington-riding was not confined to festive seasonal occasions and as a result it could not be contained and controlled.

⁶⁹ Hutton, *Stations of the Sun*, p.400

⁷⁰ Greenslade, ed., *Thomas Hardy's 'Facts' Notebook*, 192d, 192f, p.285

⁷¹ Samuel Stone, *The Justices' Manual, or, Guide to the Ordinary Duties of a Justice of the Peace: with Table of Cases, Appendix of Forms, and Table of Punishments*, 23rd ed. (London, *British Law: Administration of Justice*, 1885), p.806

⁷² *Ibid*, p.804

⁷³ Hutton, *Stations of the Sun*, p.402

⁷⁴ Firor, *Folkways in Thomas Hardy*, p.241

⁷⁵ Ingram, 'Ridings, Rough Music and Reform,' p.94

⁷⁶ *Ibid*, p.103

Festive enactments of popular justice such as skimmington-riding could provide the occasion of a direct attack on official legal authority. The version of popular justice enacted on Henchard is more subversive than that of Eustacia as it is not contained within an official holiday and furthermore, while it represents conservative collective morality, it is a direct attack on an authority figure. One of the skimmington effigies is Henchard, the former mayor and magistrate of the town and the satirical assault is also directed toward Farfrae, who has assumed the role of mayor. In addition to the mockery of these civic officials, the depiction of the skimmington-riding incident also serves to poke fun at the local constables. The derisory depiction of the constables in the investigation into the skimmington-riding in *The Mayor of Casterbridge* is a social commentary on the reality of contemporary local law enforcement. At the time of the novel's action, the early 1850s, the Metropolitan Police Force had not yet been established in rural areas like Dorset. Before the creation of a specialist police force, 'parish constables,' appointed by magistrates, performed police duties. This system of policing was deemed to be corrupt and inefficient.⁷⁷ The 'Second Report of the Commissioners on County Rates' argues that the efficiency of the local parish constable is compromised by his belonging to the class and community which he serves, thus 'he is embarrassed in the discharge of his duty by considerations of personal safety, interest or feeling, and by an anxiety to retain the good will of his neighbours.'⁷⁸ In *The Mayor of Casterbridge*, the 'success' of popular justice is contrasted with the ineffectual operation of the Law as the local constabulary is mocked in the parodic investigation into the skimmington-riding scene.

Although skimmington-riding was criminalized from 1882, the ritual was still enacted; in 1884 it was a common occurrence in many Dorset towns and as late as 1917 the police in a Dorset village broke up a skimmington-riding.⁷⁹ Brown records Richard Kelly's recollections of an altercation following the ritual: "The one and only constable tried to catch Steer and lock him up, but to no purpose; the policemen were always swept on one

⁷⁷ David Philips and Robert D. Storch, *Policing Provincial England 1829-1856: the Politics of Reform* (London: Leicester University Press, 1999), pp.12-13

⁷⁸ 'Second Report of the Commissioners on County Rates' (58), *Parl. Papers* (1836), vol. 27, p.1, at pp.8-9, quoted by Leon Radzinowicz, *A History of English Criminal Law and Its Administration From 1750*, vol. 4 (London: Stevens & Son, 1968), p.222

⁷⁹ Samuel Chew, *Thomas Hardy, Poet and Novelist* (Bryn Mawr, PA.: Bryn Mawr College, 1921), p.113

side; they were a small matter in the excitement of the chase.”⁸⁰ In *The Mayor of Casterbridge*, although the skimmington-riding results in the death of Lucetta, the narrative focuses on the Casterbridge constables’ ineffectual search for the culprits. Mr Benjamin Grower seeks out the two police constables who are described as ‘shrivelled men whom he ultimately found in hiding up an alley yet more shrivelled than usual, having some not ungrounded fears that they might be roughly handled if seen’ (MC, p.284). Aware that they are outnumbered, the two ‘rusty-jointed executors of the law’ (MC, p.286) hide their Government staves up a water-pipe, mirroring the actions of the culprits who comically hide the instruments they had employed in the skimmington-riding in their clothes and in the oven of Peter’s Finger inn (MC, p.286). The tone of the scene of the investigation is unmistakably comic and sympathy is on the side of the Mixen Lane residents. This is facilitated by the figurative place of Durnover in relation to the main locale of Casterbridge in the novel and the use of makeshift wooden bridges to facilitate access to occupants. When the constables come to investigate the origin of the skimmington-riding, as noted by Suzanne Keen, the difficulty of gaining access by the ‘legal’ route, gives the guilty participants time to raise the cry and hide evidence.⁸¹ Despite the severity of the Law, the Mixen Lane occupants seem to have the upper hand while the efforts of the police are ineffectual.

The Casterbridge constabulary is also presented in a comic light in the courtroom scene in *The Mayor of Casterbridge*. The ‘Second Report of the Commissioners on County Rates’ held the abilities of the police constables up for derision on the grounds that the police establishment consisted of a constable nominated by his predecessor without inquiry as to his qualifications, education or fitness for the office. The Report’s author notes: ‘So common is it for the constable to be unable to write or read, that an improper fee is often charged upon that ground by the magistrates’ clerk – for making out the constable’s bill for conveyance to gaol.’⁸² Stubberd’s testimony as witness and constable

⁸⁰ Theo Brown, ‘The Stag-Hunt in Devon,’ in *Folklore* 63(2), 1952, pp.104-109, p.105

⁸¹ Keen, *Victorian Renovations of the Novel*, p.142

⁸² ‘Second Report of the Commissioners on County Rates’ (58), 1836, *Parl. Papers* (1836), vol. 27, p.1, at pp.8-9, quoted by Radzinowicz in *A History of English Criminal Law*, vol. 4, (London: Stevens and Son, 1968), p.221

who has detained Mrs Goodenough for her offence serves to illustrate the criticism that members of the constabulary are uneducated:

“Hearing a’ illegal noise I went down the street at twenty-five minutes past eleven P.M. on the night of the fifth instinct, Hannah Dominy. When I had —” (*MC*, p.213).

The narrator humourously remarks of Stubberd’s testimony: ‘careful not to outrun the clerk’s penmanship Stubberd pulled up again; for having got his evidence by heart it was immaterial to him whereabouts he broke off’ (*MC*, p.213.). This comedic element in the scene is based on Hardy’s witnessing courtroom behaviour, which he noted in his autobiography:

Witnesses always begin their evidence in sentences containing ornamental words, evidently prepared beforehand, but when they get into the thick of it this breaks down to struggling grammar and a lamentably jumbled narrative.⁸³

Stubberd is mocked as an ineffectual constable uneducated in legal discourse, but the scene also itself is a mockery of legal discourse: the narration of Mrs Goodenough’s dialogue interspersed with euphemistic ‘dees’ and ‘bees’ renders the account ridiculous; it is neither formal legal parlance, nor accurate testimony of the conversation held (*MC*, p.213). That it is related in all seriousness makes both the witness and legal language the comic targets of the scene.

The courtroom scene in *The Mayor of Casterbridge* not only satirizes the local constable, but is a carnivalesque attack on trial procedure. While the comic representation of a fictional constabulary may be only mildly subversive, the mockery of the Law itself is more so. Mrs Goodenough, whose summons to the court is for the offence of urinating on the Church wall, invests the courtroom scene with the medieval spirit of carnival of the bodily grotesque. The act, in keeping with ‘grotesque realism,’ serves to lower that which

⁸³ F.E. Hardy, *The Life of Thomas Hardy*, p.173

is 'high, spiritual, ideal, abstract,'⁸⁴ not merely the Church, but, in the context of the court, also the formality of trial procedure and legal language. The fact of the apprehension for her offence is itself a satirical comment on the role of the newly-implemented police force. Under the Metropolitan Police Act 1829, a constable was empowered to apprehend 'all loose, idle and disorderly Persons whom he shall find disturbing the public Peace, or whom he shall have just Cause to suspect of any evil Designs.'⁸⁵ Section 54 (13) of the Metropolitan Police Act 1839 included the authorization of the police to arrest without warrant any person using 'any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned.'⁸⁶ Prior to the implementation of this Act, the police had been instructed by the Commissioners that they were not justified in 'depriving anyone of his liberty for words only.'⁸⁷ This legal amendment allowed for the apprehension of anyone under the influence of alcohol who was deemed to be 'guilty of riotous or indecent behavior.'⁸⁸ Constable Stubberd's apprehension of Mrs Goodenough for urinating against the church wall is a *reductio ad absurdum* of the new law.

While the courtroom scene in *The Mayor of Casterbridge* is likely to have been influenced by Hardy's first-hand witnessing of trial procedure, the staging of the scene in burlesque style is likely to have been influenced by the contemporary popular satirical entertainment of mock-trials. In the mid-nineteenth century, Renton Nicholson staged mock-trial shows called the 'Judge and Jury' show in public houses in London, under the sobriquet 'Baron' Nicholson, as he frequently acted as judge. Nicholson's 'Judge and Jury' show was highly popular and 'drew all London',⁸⁹ including, it seems, Thomas Hardy, on at least one occasion. In his autobiography, Hardy records that in 1863 'The

⁸⁴ Bakhtin, *Rabelais and his World*, p.19

⁸⁵ R. Isaacs; C. Whitmore; W. Dickinson, 'Report of the Royal Commission upon the Duties of the Metropolitan Police,' at <http://www.bopcris.ac.uk/bopall/ref7638.html>, accessed on 16 August 2007

⁸⁶ 'Metropolitan Police Act 1839' (c.47) at <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=99&NavFrom=2&parentActiveTextDocId=1031192&activetextdocid=1031194>, accessed on 6 August 2007

⁸⁷ W.R. Cornish et al., *Crime and Law in Nineteenth-Century Britain* (Dublin: Irish University Press, 1978), p.192

⁸⁸ 'Report of the Royal Commission upon the Duties of the Metropolitan Police' at <http://www.bopcris.ac.uk/bopall/ref7638.html> accessed on 6 August 2007

⁸⁹ Thomas Burke, *London in My Time* (London: Rich and Cowan, 1934), p.164

Cider Cellars and the Coal Hole were still flourishing, with 'Judge and Jury' mock trials, "Baron Nicholson" or his successor being judge.⁹⁰ Again in 1891, he writes of a Judge of the Supreme Court who was guest at a dinner-party who reminded him of Baron Nicholson 'of 'Judge and Jury' fame.'⁹¹ Nicholson presided as judge with out-of-work actors acting as counsel and witnesses. These comic trials were satirical representations of fictitious or semi-fictitious cases, most frequently of a sexual nature, involving divorce proceedings or breach-of-promise.⁹² The naming of Mrs Goodenough points to the moral indefiniteness of the novel and that of the magistrate Mr Blowbody may reflect the influence of Fielding's *Amelia* in which Justice Thrasher commits persons to prison without hearing their defense. Ultimately this style of comic nomenclature derives from mock-trials such as those of Baron Nicholson, in which Sergeants Rumfuss and Anyweather feature.⁹³

According to a contemporary account, the *raison-d'être* of the mock-trial was to deride official court procedure: 'the whole object of this parody of a court was to elicit improper evidence and point it with improper comment.'⁹⁴ J. Ewing Ritchie records the nature of the proceedings:

A jury was selected; the prosecutor opened his case, which, to suit the depraved taste of his patrons, was invariably one of seduction or crim. con [criminal conversation (adultery)]. Witnesses were examined and cross-examined, the females being men dressed up in women's clothes, and everything was done that could be to pander to the lowest propensities of depraved humanity. [...] The jury were complimented on their intelligent and lascivious appearance, all the filthy

⁹⁰ F.E. Hardy, *The Life of Thomas Hardy*, p.43

⁹¹ *Ibid*, p.244

⁹² Michael Mason, *The Making of Victorian Sexual Attitudes* (Oxford: Oxford University Press, 1994) p.54

⁹³ John L. Bradley, ed., *Rogue's Progress: The Autobiography of 'Lord Chief Baron' Nicholson* (London: Lowe and Brydone Ltd., 1966), p.253. The tradition of mock-trials influenced literature from Fielding to Dickens, whose legal caricatures include Justice Thrasher (*Amelia*), Magistrate Nupkins (*The Pickwick Papers*) and Mr. Fang, (the magistrate in *Oliver Twist*). Cf. Sally Ledger 'From Queen Caroline to Lady Dedlock: Dickens and the Popular Radical Imagination' in *Victorian Literature and Culture* 32(2), 2004, pp. 575-600, p.579

⁹⁴ Burke, *London in My Time*, p.164

particulars which had been noted were referred to in Dog Latin, and poetical quotations were plentifully thrown in.⁹⁵

One of the chief features of this satirical production was the comical overuse of Latin, as can be seen in Nicholson's sham report of a trial in which he defends himself on a charge relating to his cooking at the Garrick's Head. The nonsense charge is summarized in incomprehensible Latin:

In the first place you have not filed your *flummuxur* — that was essential to be done; nor have you in *elegit posui placita demonstravit causa applicationis* — that was material. [...] Vending viands in a public window, without blinds, is a relict of barbarism: it is, to a certain extent, *magnum nusinarum*, especially to the hungry poor. The law of *vendito populo* has been settled in the case of 'Gobblegrate,' reported in Selwyn. The *dictum* is *lex curiae* to the present time. This application cannot be entertained.⁹⁶

Likewise in *The Mayor of Casterbridge*, the constable's testimony against Mrs Goodenough for urinating against the Church wall cannot be elevated by the use of formal language. Rather than Latin elevating the seriousness of the charge, the ridiculous nature of the offence lowers the tone of the Latin. The mock Latin, 'Hannah Dominy,' serves to make fun of Constable Stubberd but furthermore, his attempt to integrate Mrs Goodenough's expletives into formal legal testimony serves to disrupt the official atmosphere. This scene thus belongs to the medieval tradition of Latin parody in which 'the entire official ideology and ritual are [...] shown in their comic aspect.'⁹⁷

Mrs Goodenough undermines the formality required in the courtroom through her introduction of expletives as the polished Latinate language of court is infiltrated by the language of the marketplace. Stubberd's testimony is permeated with her profanities and oaths which Bakhtin notes

⁹⁵ Bradley, ed., *Rogue's Progress*, p.xi

⁹⁶ *Ibid*, p.250

⁹⁷ Bakhtin, *Rabelais and his World*, p.13

were not initially related to laughter, but they were excluded from the sphere of official speech because they broke the norms; they were therefore transferred to the familiar sphere of the marketplace.⁹⁸

Stubberd's testimony brings Mrs Goodenough's drunken responses into the formal realm of the courtroom:

"Dost hear, old turmit-head? Put away that dee lantern. I have floored fellows a dee sight finer-looking than a dee fool like thee, you son of a bee, dee me if I haint" (MC, p.213).

The use of profanities is a form of resistance to Law in its broadest sense as Mrs Goodenough subverts social laws as well as those of the court. James Scott demonstrates the role of carnival as 'the ritual location of uninhibited speech'⁹⁹ to undermine formal language and etiquette:

It was the only place where undominated discourse prevailed, where there was no servility, false pretences, obsequiousness, or etiquettes of circumlocution. If, in carnival and the marketplace, profanities and curses prevailed, that was because the euphemisms required by official discourse were unnecessary.¹⁰⁰

The courtroom scene is also suffused with what Rabelais calls *gramatica jocosa* (laughing grammar), 'whereby grammatical order is transgressed to reveal erotic and obscene or merely materially satisfying countermeaning.'¹⁰¹ Mrs Goodenough splits the first person "I" into two to render her both speaker and listener and in terms of the trial, into dual roles of the accused and legal defence: "I object to that conversation!" interposed the old woman. "I was not capable enough to hear what I said, and what is said out of my hearing is not evidence" (MC, p.213). The effect of the use of profanities and *grammatica jocosa* is that 'two myths perish simultaneously: the myth of a language

⁹⁸ *Ibid*, p.17

⁹⁹ Scott, *Domination and the Arts of Resistance*, p.175

¹⁰⁰ *Ibid*, p.175

¹⁰¹ Stallybrass and White, *The Politics and Poetics of Transgression*, pp.10-11

that presumes to be the only language, and the myth of a language that presumes to be completely unified.¹⁰²

In his study of nineteenth-century comic literature and performances, Donald Gray argues that Victorian humour was not so much used subversively as 'a tactic or a revelation in earnest discourse' as it was 'a holiday from taking things and ideas seriously'.¹⁰³

The occasions of most Victorian laughter were the trivial events and temporary celebrities of everyday experience, made amusing by organizing these familiar objects and ideas so that they were deprived of their usual significance and force.¹⁰⁴

It may be argued that Baron Nicholson's mock-trials did little more than afford a counterpoint to the seriousness of official trial procedure, through indulging in *grammatica jocosca* which does nothing more subversive than offer 'a plural, unfixed, comic view of the world'.¹⁰⁵ Justice Stephen, however, took the matter more seriously and perceived comic slights on the Law as more dangerous when situated in the discourse of a novel. He argued that Dickens' mockery of the Circumlocution office could be seen as a dangerous threat to the state because while men of the world may laugh, the poor and uneducated take satire against institutions at face value. He denounces Dickens' carnivalesque rendering of the world:

He is the most prominent and popular of the innumerable preachers of that flattering doctrine, that, by some means or other, the world has been turned topsy-turvy – so that all the folly and stupidity are found in the highest places and all the good sense, moderation and ability in the lowest.¹⁰⁶

¹⁰² Mikhail Bakhtin, *The Dialogic Imagination*, edited by Michael Holquist; translated by Caryl Emerson and Michael Holquist (Austin, Tex.; London: University of Texas Press, 1981), p.68

¹⁰³ Donald J. Gray, 'The Uses of Victorian Laughter,' *Victorian Studies* 10, 1966, pp.145-176, p.146

¹⁰⁴ *Ibid*, p.147

¹⁰⁵ K. Arthur, 'Bakhtin, Kristeva and carnival,' unpublished dissertation, Melbourne (1982), quoted by Stallybrass and White, *The Politics and Poetics of Transgression*, p.11

¹⁰⁶ James Fitzjames Stephens, 'Mr Dickens as a Politician' in *Saturday Review*, 3, 1857, pp.8-9, p.8

Like Dickens' broad satirical attacks, Hardy's lampooning of the court in *The Mayor of Casterbridge* is not confined to the courtroom scene but part of a more sustained attack on legal procedure. The vagaries of nineteenth century court procedure are held up for ridicule in narrative comment in *The Mayor of Casterbridge*:

Chicanery, subterfuge, had hardly a place in the streets of this honest borough to all appearance; and it was said that the lawyers in the Court House hard by threw in strong arguments for the other side out of pure generosity (though apparently by mischance) when advancing their own (*MC*, p.89).

The Mayor of Casterbridge's mockery of courtroom procedure is part of Hardy's more serious observation of the role of the trial scene. The only actual courtroom scene in Hardy's novels takes place in *The Mayor of Casterbridge*, but as will be argued in Chapter Three, a metaphorical trial takes place in each of Hardy's tragic novels, which he developed to become a significant scene building toward the death of the tragic hero. The following chapter will analyze Hardy's metaphorical depiction of court proceedings and the psychology of the accused under interrogation.

COURTROOM DRAMA AND THE DOMESTIC TRIAL SCENE

Hardy's subversive representation of a courtroom trial in *The Mayor of Casterbridge* was a commentary on developments in trial procedure, which was profoundly reshaped during the course of the nineteenth century. In the eighteenth century the Justice of the Peace played an integral role in court procedure; as Beattie notes:

[I]t was their duty to bring the parties in conflict before them, to take depositions of the complainant and his witnesses, to examine the accused, and to ensure that they appeared at the next sitting of the appropriate court.¹

With the implementation of the Prisoners' Counsel Act in 1836 the role of the magistrate was suddenly and emphatically curtailed. This Act, which allowed defense counsel for the first time to not only cross-examine witnesses, but also to address the jury and offer observations about the evidence. This was an amendment to judicial practice which Justice James Fitzjames Stephen described as 'the most remarkable introduced into the practice of courts was the process by which the old rule which deprived prisoners of the assistance of counsel in trials for felony was gradually relaxed.'² Following the Prisoners' Counsel Act of 1836 and the involvement of lawyers and jury in judgment, the flexibility of the magistrate's judgment was compromised. Sir Thomas Skryme claims that the role of defence counsel was only transferred to the lawyers under protest of the magistrates who still sought at this time to have full responsibility in representation and judgment.³ The nature of the role of magistrate changed from being general administrator, which included the defense of the accused, to the more narrowly focused role of judge.⁴ One of the most significant reforms in criminal justice was the Prisoners' Counsel Act of 1836;

¹ J.M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford: Clarendon, 1986), p.36

² James Fitzjames Stephen, *A History of the Criminal Law of England*, vol. 1 (London: Macmillan, 1883), p.424

³ Sir Thomas Skryme, *History of the Justices of the Peace*, (Chichester: Barry Rose and the Justice of the Peace, 1994), p.669

⁴ Bertram Osborne, *Justices of the Peace, 1361-1848: A History of the Justices of the Peace for the Counties of England* (Dorset: The Sedgill Press, 1960), p.216

this Act had a profound impact on courtroom trial procedure, reshaping the courtroom trial with both sides fully represented by legal counsel and representation.⁵ Prior to this

the victim of the crime usually serve[d] as the prosecutor, aided by other witnesses and sometimes by the lay constable. A lay magistrate, the justice of the peace, organized the prosecution witnesses for trial at a pretrial committal proceeding.⁶

The arrival of lawyers to trial procedure impacted on the form of the novel in the eighteenth and nineteenth centuries, a relationship that has been subject to critical enquiry in recent years. John Bender argues that the 'lawyerization' of the criminal trial could be called a form of 'novelization,'⁷ with both story-telling forums structured around presentation and evaluation of evidence and exposition of character and plot. As trial procedure developed, trial scenes also infiltrated the novel, providing a commentary on the new format of lawyerized trial procedure.

Kristin Brady argues in her analysis of his short stories, that Hardy's familiarity with the Law results in his 'unobtrusive but deliberate use of legal language throughout the narrative [which] invites the reader to analyse events as though in a court room.'⁸ Hardy's tragic novels also invite this form of reading. Although it was 1884 when Hardy first took his oath and qualified as a borough magistrate, in 1870 Hardy was in a position to observe the Royal Courts of Justice when he worked at Mr Brandon's office in St Clements Inn, opposite the courts.⁹ *The Mayor of Casterbridge* is not the first of Hardy's novels in which legal language infiltrates the domestic sphere; it is a pervasive element throughout his fiction. References to legal cases and characters infiltrate Hardy's fiction from his first novel, *Desperate Remedies* (1871) to *Jude the Obscure* (1895), his last. Although not centred around crime, his tragic plots begin with moral misdemeanour.

⁵ John H. Langbein, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: the Appearance of Solicitors' in *Cambridge Law Journal* 58(2), 1999, pp.314-65, p.318

⁶ *Ibid*, pp.314-15

⁷ John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth Century England* (Chicago; London: University of Chicago Press, 1987), p.176

⁸ Kristin Brady, *The Short Stories of Thomas Hardy* (London: Macmillan, 1984), p.249

⁹ William A. Davis, *Thomas Hardy and the Law: Legal Presences in Hardy's Life and Fiction* (Newark: University of Delaware Press, 2003), p.20

Subsequently, the narrator acts as defence lawyer, extenuating the blame of the tragic hero or heroine through third-person representation, while the language of legal discourse within the narrative shows the comparative failure of the Law to provide adequate representation.

In an interview with *The World* (1886) Hardy claimed that

he played the part of Justice Silence with great assiduity, though admitting that the duties of office keep him in touch with some of the sterner facts of existence that are apt to be lost sight of in the dream-world of books.¹⁰

As Davis notes, '[this] comment implies a separation between Hardy's fiction and the Law that does not hold up under examination.'¹¹ In his autobiography, Hardy shows a seemingly matter-of-fact relationship between his witnessing court proceedings and his novel-writing, as he describes how he occasionally spent half an hour at the police courts 'being still compelled to get novel padding.'¹² This note, made in 1890, having had six years direct experience of court proceedings as a magistrate, reflects a detached and critical stance towards trial proceedings in general:

He noticed that "the public" appeared to be mostly represented by grimy gentlemen who had had previous experience of the courts from a position in the dock: that there were people sitting round an anteroom chamber of the courts as if waiting for the doctor; that the character of the witness usually deteriorated under cross-examination; and that the magistrate's spectacles as a rule endeavoured to flash out a strictly just manner combined with as much generosity as justice would allow.¹³

¹⁰ Interview in *World*, 17 February 1886 reprinted in the *Dorset County Chronicle*, 18 February 1886, p.4., quoted by Edward C. Sampson in 'Thomas Hardy: Justice of the Peace' in *Colby Library Quarterly* 13, 1977, pp.263-73, p.264

¹¹ Davis, *Thomas Hardy and the Law*, p.44

¹² F.E. Hardy, *The Life of Thomas Hardy*, p.238

¹³ *Ibid*, p.238

This represents a marked change of attitude towards magistracy to that represented in *Far from the Madding Crowd*, (1874) in which the arrival of the London judge to preside at the Assizes is described:

“Joseph, I zeed you squeezing close to the carriage,” said Coggan, as they walked. “Did ye notice my lord judge’s face?”

“I did,” said Poorgrass, “I looked hard at ’en, as if I would read his very soul; and there was mercy in his eyes — or to speak with the exact truth required of us at this solemn time, in that eye that was towards me.”

“Well, I hope for the best,” said Coggan, “though bad that must be. However, I shan’t go to the trial, and I’d advise the rest of ye that bain’t wanted to bide away. ’Twill disturb his [Boldwood’s] mind more than anything to see us there staring at him as if he were a show” (*FMC*, p.384).

This representation of attitudes towards judicial trial is the most positive in Hardy’s fiction. The narrative upholds Joseph Poorgrass’s sanguine estimation of the judge’s leniency, as Boldwood’s punishment is imprisonment rather than the death penalty, as legal retribution for the murder of Troy. The implicit faith in the judicial system expressed by Jan Coggan and Joseph Poorgrass was to be subject to interrogation later in Hardy’s fiction.

Jan Coggan’s final comment points to the transition outlined by Jonathon Grossman, that the new site of public interest in the nineteenth century was the criminal trial as the spectacle of witness-box interrogation supplanted that of the gallows. In *The Mayor of Casterbridge*, the courtroom, like the scaffold, is a site of visual and dramatic interest. In 1886, Hardy attended the notorious trial of Baronet Sir Charles Wentworth Dilke, who was accused of an adulterous affair with the daughter of Donald Crawford MP. In Hardy’s commentary on the Crawford-Dilke case, rather than referring to the circumstances of the case, he notes the dynamics of representation within the courtroom: ‘The witness’s little peculiarities supersede those of all other personages together. He is at once king and victim.’¹⁴ In Hardy’s commentary on the Crawford-Dilke case, the

¹⁴ *Ibid*, p.189

power relations that should be in place (judge over witness) are inverted in terms of who is the focal point in cross-examination dialogue. Hardy's description of the witness as 'king and victim' suggests that the power dynamics of the courtroom were more fluid than those of execution and potentially subject to manipulation.

In *The Mayor of Casterbridge*, the only novel of Hardy's to feature a courtroom scene, the narrator points to the centrality of the courtroom scene in structural terms in relation to Henchard's rise and fall:

Small as the police-court incident had been in itself it formed the edge or turn in the incline of Henchard's fortunes. On that day — almost at that minute — he passed the ridge of prosperity and honour, and began to descend rapidly on the other side (*MC*, p.229).

Despite the fact that he is no longer mayor, Henchard acts as magistrate and stands in judgment of Mrs Goodenough. Although the time scheme of the novel suggests that the trial took place in the 1840s, there are no defence lawyers and the trial proceeds as a private prosecution between prosecutor, Constable Stubberd, and accused, Mrs Goodenough, the furmity-woman. Mrs Goodenough had witnessed Henchard's sale of his wife twenty years previously and because of this Henchard finds himself on trial in the courtroom in which he presides. Henchard's role as a magistrate is central to his characterization and in the courtroom scene he demonstrates the tragic flaw that resulted in both his success and his downfall:

Henchard as a Justice of the Peace may at first seem to be an even greater incongruity than Shallow and Silence themselves. But his rough and ready perceptions, his sledgehammer directness, had often served him better than nice legal knowledge in dispatching such simple business as fell to his hands in this court (*MC*, p.213).

Thus, the narrator chooses to defend Henchard as magistrate, while acknowledging the unlikelihood of his being suited to such a role; his 'sledgehammer directness' contrasted favourably with the legal discourse that is parodied in the burlesque mock-trial scene.

The contrast drawn between Henchard and the two Shakespearean magistrates is a pointed criticism of legalese. Shallow and Silence are Justices of the Peace in *King Henry IV* Part II (1594) who speak with either extreme reserve or meaningless tautology. Henchard, on the other hand, interrupts proceedings, drawing attention to the crass formality required for legal testimony, as when he objects to Stubberd's testimony:

When Stubberd had rambled on a little further Henchard broke out impatiently, "Come — we don't want to hear any more of them cust dees and bees! Say the words out like a man, and don't be so modest, Stubberd; or else leave it alone!" (*MC*, pp.213-14).

Constable Stubberd is depicted as uneducated and simply as an actor in a performance who has learned his lines. In *The Mayor of Casterbridge*, there is a recurrent metaphor of drama and there is a suggestion that this courtroom trial has become a new forum of spectacle with crowds gathering for a sensational or unusual case, such as Mrs Goodenough has advertised:

The sensation in the court was indescribably great. Henchard left the chair, and came out, passing through a group of people on the steps and outside that was much larger than usual; for it seemed that the old firmity dealer had mysteriously hinted to the denizens of the lane in which she had been lodging since her arrival, that she knew a queer thing or two about their great local man Mr Henchard, if she chose to tell it. This had brought them hither (*MC*, p.214-15).

The suggested affinity between drama and courtroom procedure in *The Mayor of Casterbridge* emphasizes the performative aspect of the witness's testimony. Serjeant Hawkins argued that there was no need for defence counsel as 'generally every one of common understanding may as properly speak to a matter of fact as if he were the best Lawyer' as 'it requires no manner of skill to make a plain and honest Defence.'¹⁵

¹⁵ William Hawkins, *A Treatise on the Pleas of the Crown*, sec. 2, quoted by Felix Rackow in 'The Right to Counsel: English and American Precedents' in *The William and Mary Quarterly* 11(1), 1954, pp.3-27, p.6

However, Hardy emphasizes that this type of unskilled defence is inadequate when pitted against an interrogator well-versed in legal discourse. Henchard, with his characteristic 'sledgehammer directness,' does not have the performative skills to manipulate court procedure.

The defendant in the trial, Mrs Goodenough, is, in contrast to Henchard, presented as an expert in modern disciplinary proceedings who can manipulate the judicial process through her use of legal language. Otherwise a dialect speaker, Mrs Goodenough becomes articulate in the witness-box. The narrator notes that 'the old woman had appeared in court so many more times than the magistrates themselves, that they were obliged to keep a sharp look-out upon their procedure' (*MC*, p.213). She interrupts proceedings with objections as though she were a lawyer: "I object to that conversation [...] I was not capable to hear what I said, and what is said out of my hearing is not evidence" (*MC*, p.213). In addition to the humour of the scene, Mrs Goodenough expertly manipulates legal procedure through language. As Marjorie Garson notes, by dividing the self in two, she cannot be both defendant and witness at the same time.¹⁶ This allows her to invert trial procedure changing her role from defendant to prosecutor. Mrs Goodenough chooses to cross-examine her interrogator on his own behaviour, and the tables are turned on the mayor. Her testimony against Henchard is a clear and concise synopsis of the novel's early narrative. Mrs Goodenough, like the residents of Mixen Lane, has experience of criminality and the Law. Earlier, when questioned by Susan if she remembered the wife-sale after eighteen years, she replies that she can remember "every murder, every manslaughter, even every pocket-picking" (*MC*, p.55) but not the wife-sale. Although she can scarcely remember the incident, and claims that "we don't gi'e it headroom, we don't such as that [...] Lord's my life, I shouldn't ha' thought of it again!" (*MC*, p.55), Mrs Goodenough uses the incident against Henchard and uses it to ruin his character and instigate his loss of social standing in Casterbridge. This reversal is ultimately a parody of the fluid power dynamics of the courtroom allowed for by manipulation of language.

¹⁶ Marjorie Garson, 'The Mayor of Casterbridge: the Bounds of Propriety' in Julian Wolfreys, ed., *The Mayor of Casterbridge: Contemporary Critical Essays* (London: Macmillan, 2000), pp.80-115, p.81

Although a magistrate, supposedly well versed in courtroom language and procedure, in contrast to Mrs Goodenough, Henchard cannot or will not articulate and manipulate legal discourse to provide his own defence. Although the court clerk intervenes, "'Tis a concocted story [...] So hold your tongue" (MC, p.214), Henchard does not take the opportunity afforded him of dismissing Mrs Goodenough's testimony. Nor does he use the defence of drunkenness, although later in the novel he uses this defence, stating, "I was not in my senses and a man's senses are himself" (MC, p.295). At the time of the trial however, Henchard enacts the role of magistrate and judge of his own former misdemeanour and fails to adequately represent himself. The narrator emphasizes that Henchard's loss of social standing is directly related to the manner in which the story of his former wife-sale is represented:

The retort of the furmity-woman before the magistrate had spread; and in four-and-twenty hours there was not a person in Casterbridge who remained unacquainted with the story of Henchard's mad freak at Weydon-Priors, long years before. The amends he had made in after life were lost sight of in the dramatic glare of the original act. Had the incident been well known of old and always, it might by this time have grown to be lightly regarded as the rather tall wild oat, but well-nigh the single one, of a young man with whom the steady and mature (if somewhat headstrong) burgher of to-day had scarcely a point in common. But the act having lain as dead and buried ever since, the interspace of years was unperceived; and the black spot of his youth wore the aspect of a recent crime (MC, p.229).

This passage from *The Mayor of Casterbridge* serves to reveal the disparity between the competing testimonies of legal and narrative representation. Mrs Goodenough and Henchard speak in the context of a courtroom as though they are witnesses in a real legal trial and thus recreate 'the dramatic glare of the original act.' The narrator presents an alternative narrative version of events, which mirrors a defence lawyer's testimony in language designed to appeal to a jury's softer sentiments. Hardy's narrator represents Henchard's act as a 'mad freak' in contrast to the representation of this same act in court as though it were a 'recent crime,' as it is depicted through Mrs Goodenough's testimony.

The Mayor of Casterbridge provides a forum for the narrator's defence and provision of the full circumstances of the novel's action. Third-person narration provides omniscient insight into the minds of characters to which the Law does not have access. As Schor notes, realist narrative and trial procedure are competing representations:

Realism, as a convention which marks itself by barely being able to speak its own name seems to come most to the fore when it is representing itself (however seemingly inadequately) in the witness box; the novel stages its inner self (what it nominally wants us to regard as its truer self) in these persistent scenes of character testimony. Only when it defeats the "show" of the legal world, it would seem, can realism properly make a spectacle of itself.¹⁷

The omniscient narration of *The Mayor of Casterbridge*, having access to interior life, increasingly defends Henchard's behaviour, providing a representation of his whole character, rather than the isolated incident on which his character is judged.

Other than in *The Mayor of Casterbridge*, Hardy's courtroom scenes are not represented in session but take place outside of the narrative.¹⁸ His experience of court proceedings was, however, a central influence on the development of the plots of his tragic fiction. The nineteenth-century system of private prosecution did not set out clear guidelines on punishable breaches of the Law. Hardy owned a copy of Samuel Stone's *The Justice's Pocket Manual*,¹⁹ which was

intended to furnish, in a portable form, a convenient Alphabetical Reference to Such Orders under the Penal Criminal Law, as comprise the *ordinary* business of the Petty and Quarter Sessions.²⁰

¹⁷ Hilary Schor, 'Show-Trials: Character, Conviction and the Law in Victorian Fiction' in *Cardozo Studies in Law and Literature* 11(2), 1999, pp.179-195, p.181

¹⁸ The trials of Aeneas Manston, William Boldwood and Tess Clare are not depicted in narrative.

¹⁹ Interview in *World*, 17 February 1886, quoted by Sampson in 'Thomas Hardy: Justice of the Peace,' p.264

²⁰ Sir Thomas Skyrme, *History of the Justices of the Peace* (Chichester: Barry Rose and the Justice of the Peace, 1994), p.244

Stone's italics emphasize that his reference book only covers ordinary business of the court. This suggests that there was ambiguity as to what could be brought before court as complaint and that there was much that took place within the court that was not covered by legislation but required the individual judgment of the Justice of the Peace. Edward Sampson names a variety of problems which were brought in front of Hardy in court that did not involve criminal offences, including children not attending school, fraudulent enlistment on the Dorset regiment and a butcher selling bad meat.²¹ Notably, Sampson cites a case of a woman fined for using obscene language, and another woman brought to court for 'committing a nuisance' in 'Bollam's Passage,'²² both of which incidents were directly incorporated into *The Mayor of Casterbridge*.

Hardy frequently chose to develop plots from uncertain areas of the Law of which he had read. As suggested by Michael Millgate, it is likely that

it was with the notebook beside him and *The Mayor of Casterbridge* specifically in mind, that Hardy sat down, in or about March 1884, to read his way systematically through the files of the local newspaper, the *Dorset County Chronicle*, for the period beginning January 1826.²³

The 'Facts' notebook features notes from various courtroom trials as they were recorded in the *Dorset County Chronicle*; the cases on which Hardy and Emma recorded notes are concerned primarily with breaches of promise, nullity of marriage, forgery of wills, divorce and damages for adultery. The lengthiest excerpt recorded in the 'Facts' notebook was one of a number of notes on the Bligh v Wellesley case, which, like Crawford v Dilke was a high-profile case of divorce on the grounds of adultery.²⁴ It was also subject to great public interest, given that the defendant was the Duke of Wellington's nephew, William Long-Wellesley.²⁵ The 'Facts' notebook has been studied as a source for the wife sale in *The Mayor of Casterbridge* and Alec's drugging of Tess in

²¹ Sampson, 'Thomas Hardy: Justice of the Peace,' p.266

²² *Ibid*, p.266

²³ Michael Millgate, *Thomas Hardy: A Biography* (Oxford: Oxford University Press, 1982), p.248

²⁴ William Greenslade, ed., *Thomas Hardy's 'Facts' Notebook* (Aldershot: Ashgate, 2003), 120[e]–[131], pp.179-91

²⁵ *Ibid*, p.191

the first edition of *Tess*.²⁶ Such reports provided Hardy with plot material from breaches of a code of conduct, acts that may be considered morally rather than criminally wrong and are punishable within the familial setting rather than in the public environment of the courtroom.

The language of legal discourse is not confined to the courtroom scene in *The Mayor of Casterbridge*; 'court proceedings' are also domesticated, represented by a witness-box-style interrogation outside of the public environment of the court. In the earlier version of the story, serialised in *The Graphic*, the scene featuring Henchard punishing Abel Whittle is narrated with courtroom-style language:

“But let me clear up my points, your worshipful —”
Henchard turned away.
“He asked me and he questioned me, and then a’ wouldn’t hear my points!” said Abel, to the yard in general. “Now I shall twitch like a moment-hand all night to-night for fear o’ him!”²⁷

This scene was elided when Hardy revised the serialised version for book publication. It is inconsistent with the characterisation of Abel who lacks both the audacity and articulation to challenge the Law of Henchard and suggests that legal discourse is available to Abel Whittle, the fool, and it is not available to Henchard, the magistrate. However, the use of legal language outside of the courtroom was re-employed by Hardy in *The Mayor of Casterbridge* and is used as a commentary on the nature of legal interrogation.

Henchard’s inability to defend himself in the courtroom prefigures a later ‘trial scene’ with Elizabeth-Jane. When the secret of her paternity is revealed to her, Elizabeth-Jane confronts Henchard for telling her he was her father and for sending her real father away,

²⁶ Christine Winfield, “Factual Sources of Two Episodes in *The Mayor of Casterbridge*” in *Nineteenth-Century Fiction*, 25(2), 1970, pp.224-31; William Greenslade, ‘Hardy’s ‘Facts’ Notebook: A Further Source for *The Mayor of Casterbridge*’ in *Thomas Hardy Journal* 2(1), 1986, pp.33-35; Tim Dolin, ed., *Tess of the d’Urbervilles* (London: Penguin, 1988), p.72 and 415n, cited by Greenslade in *Thomas Hardy’s ‘Facts’ Notebook*, p.28

²⁷ Thomas Hardy, ‘The Mayor of Casterbridge’ in *The Graphic*, February 6, 1886, p.163

believing her to be dead. Henchard is to some degree innocent of the worst of the accusation, as he had himself believed that he was her father when he told her that he was. The narrator presents an alternative representation of events through his narrative account of Henchard's thoughts:

Henchard's lips half parted to begin an explanation. But he shut them up like a vice, and uttered not a sound. How should he, there and then, set before her with any effect the palliatives of his great faults — that he had himself been deceived in her identity at first, till informed by her mother's letter that his own child had died; that, in the second accusation, his lie had been the last desperate throw of a gamester who loved her affection better than his own honour? (*MC*, p.326).

Hardy's commentary on legal interrogation within his novels is signalled by his use of recognizable legal discourse in the context of the domestic sphere:

Among the many hindrances to such a pleading not the least was this, that he did not sufficiently value himself to lessen his sufferings by strenuous appeal or elaborate argument. Waiving therefore, his privilege of self-defence, he regarded only her discomposure. "Don't ye distress yourself on my account," he said, with proud superiority (*MC*, p.326).

While the narrator mirrors the role of a defence lawyer, representing an omniscient version of events, including Henchard's thoughts, Henchard's position in this domestic trial scene mirrors that of a defendant in court without a lawyer to engage in 'strenuous appeal or elaborate argument.' Henchard chooses to waive 'his privilege of self-defence' and that he fails to provide adequate defence is described as an expression of his character:

He had not expressed to her any regrets or excuses for what he had done in the past, but it was part of his nature to extenuate nothing and live on as one of his own worst accusers (*MC*, p.328).

When Elizabeth-Jane discovers the secret of her parentage, the narrator observes that

there was nobody to set before Elizabeth any extenuation of the absent one's deceit. Even had he been present Henchard *might scarce have pleaded it*, so little did he value himself or his good name (*MC*, p.317, emphasis added).

The legal discourse of modern disciplinary punishment which excludes Henchard is set in contrast to Henchard's own language in the domestic trial scene, in which his language prefigures the action which Henchard will carry out on himself: "What do you say? — Mr Henchard? Don't, don't scourge me like that!" (*MC*, p.325). Henchard cannot live in the new disciplinary world represented by the courtroom trial scene; he is an anachronism in this world, psychologically more at home in the age of capital punishment, failed by a disciplinary era. That Hardy's narrator adopts the language of legal discourse that is unavailable to his tragic hero suggests that the narrator is filling a deficit represented in his metaphorical trial scenes and acting as a defence lawyer to provide an adequate representation of Michael Henchard.

Legal language entering the private realm can be read metaphorically as an indirect discussion of criminal trial procedure. Schramm argues that 'the comparatively late appearance of defence lawyers in trials for felony afforded authors the imaginative space to explore narratives of exculpation.'²⁸ Hardy wrote trial scenes in the familial environment because his plots were not concerned with criminal acts but moral misdemeanours. This domestication of trial was furthermore appropriate because prosecution in the early nineteenth century was a private transaction, an altercation between individuals rather than a structured representation of both sides by legal counsel. John Langbein describes courtroom trials before the advent of counsel:

The notion that criminal defence was a suitable do-it-yourself activity arose at a time when the whole of the criminal trial was expected to transpire as a lawyer-free contest of amateurs. The prosecution was also

²⁸ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000), p.6

unrepresented. The victim of the crime usually served as the prosecutor.²⁹

Hardy reverts to this pre-defence trial system to represent the experience of the accused individual under interrogation in the domestic trial scenes of his tragic novels. The Prisoners' Counsel Act of 1836 had followed a lengthy debate among the leading voices in criminal law, a debate primarily concerned with language and the level of articulation required for testimony. Contemporary judge and legal historian Sir James Fitzjames Stephen observed that in trials before the advent of defence counsel:

The evidence given against [the prisoner] operated as so much indirect questioning, and if he omitted to answer the questions it suggested he was very likely to be convicted.³⁰

That Justice Stephen was the brother of Hardy's mentor and editor, Leslie Stephen suggests a connection also between him and Hardy that may have involved discussion of legal issues and reform. The records of Hardy's legal friendships attest to the enjoyment he derived from such legal discussion and debate.³¹ This may have influenced Hardy to directly show the necessity of defence counsel given the limited ability of many prisoners to self-represent. In contrast to the argument of Sir James Fitzjames Stephen in favour of defence counsel, Serjeant Hawkins' argued against it on the grounds that

the very speech, Gesture, and Countenance, and Manner of Defence of those who are Guilty, when they speak for themselves, may often help to disclose the Truth, which probably would not so well be discovered from the artificial Defence of others speaking for them.³²

²⁹ Langbein, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century,' p.314

³⁰ Sir James Fitzjames Stephen, *A History of the Criminal Law in England*, vol. 1 (London: Routledge/Thoemmes Press, 1996), p.440

³¹ Davis, *Thomas Hardy and the Law*, p.31

³² Hawkins, *A Treatise on the Pleas of the Crown*, c.39, sec. 2, quoted by Rackow in 'The Right to Counsel: English and American Precedents,' p.7

There is a pattern within Hardy's tragic novels demonstrating both the failure of Serjeant Hawkins' argument and supporting Sir James Fitzjames Stephen's argument for defence counsel on the grounds that defendants could not adequately represent themselves.

A Pair of Blue Eyes features the first domestic trial scene in Hardy's novels and with Elfride's interrogator significantly a barrister by profession, the scene can be read as a commentary on legal proceedings. Henry Knight's legal profession is not integral to the plot of the novel, which is essentially a tragic love story, but his characterization as a barrister in the novel mirrors the sign at his lodgings, "Barrister-at-law" being understood but not expressed' (*PBE*, p.144-45). Although Knight is characterised as primarily a reviewer, he enacts the role of a prosecuting barrister, particularly toward the end of the novel. An entire chapter is devoted to a domestic trial scene in which Knight accosts Elfride with a barrage of questions regarding her former lover Stephen Smith, with whom she had an aborted elopement to London, some years previous to her relationship with Knight.³³ A subsequent scene more directly employs the language of interrogation, with Knight self-consciously adopting the role of prosecuting lawyer: "Since you are not given to confidence, I want to ask you some plain questions. Have I your permission?" (*PBE*, p.330). Her response reflects her likely failure to represent herself as a defendant: "Yes," she said, and there came over her face a weary resignation. "Say the harshest words you can: I will bear them!" (*PBE*, p.330). As in *The Return of the Native*, the novel employs the device of using a letter as evidence in a second 'trial' scene, but this evidence is secondary to an interrogation based on appearance:

"Not that I believe in malicious letter-writers and whisperers; not I. I don't know whether I do or don't; upon my soul, I can't tell. I know this: a religion was building itself upon you in my heart. I looked into your eyes, and thought I saw there truth and innocence as pure and perfect as ever embodied by God in the flesh of woman. Perfect truth is too much to expect, but ordinary truth I will have or nothing at all" (*PBE*, p.330).

³³ Thomas Hardy, *A Pair of Blue Eyes*, chapter 32.

The centrality of the scene is reflected in the fact that the title of the novel is given to Elfride's eyes, which are treated as evidence within this trial scene. Knight claims to refute the letter as evidence and relies on appearance, as does Clym in the later novel, *The Return of the Native*. Knight differentiates between 'perfect truth' and 'ordinary truth,' with ordinary truth representing 'legal' truth, which, it is implied, can be acceptable, even when falling short of the whole truth. His speech reflects an unstable notion as to what constitutes evidence, which is the fundamental basis of trial. As Knight questions her on the 'damnable statement' of the letter's accusation, he trusts to her response. In keeping with his role as barrister, Knight adheres to legal rules about admissible evidence which can only be oral testimony and cannot judge by appearance. While seemingly following correct trial procedure in this manner, he does, however, suppress her defence:

"Answer my questions; say nothing else, Elfride. Did you ever deliberately try to marry him in secret?"

"No; not deliberately."

"But did you do it?"

A feeble red passed over her face.

"Yes," she said.

"And after that — did you — write to him as your husband; and did he address you as his wife?"

"Listen, listen! It was —"

"Do answer me; only answer me!"

"Then, yes, we did." Her lips shook; but it was with some dignity that she continued: "I would gladly have told you; for I knew and know I had done wrong. But I dared not; I loved you too well. O, so well! You have been everything in the world to me — and you are now. Will you now forgive me?" (*PBE*, p.331).

Elfride's response to the interrogation is rendered visually; she cannot articulate her defence, but this is not noted by Knight.

Elfride's countenance wore a look indicating utter despair of being able to explain matters so that they would seem no more than they really were, — a despair which not only relinquishes the hope of direct explanation, but wearily gives up all collateral chances of extenuation (*PBE*, p.332).

In *A Pair of Blue Eyes*, Elfride's inadequate self-representation forms the crux of the tragedy. Henry Knight later evaluates Elfride's death as a result of his interrogation:

Where the great grief lay was in perceiving that the very innocence of Elfride in reading her little fault as one so grave was what had fatally misled him. Had Elfride, with any degree of coolness, asserted that she had done no harm, the poisonous breath of the dead Mrs. Jethway would have been inoperative. Why did he not make his little docile girl tell more? If on that subject he had only exercised the imperativeness customary with him on others, all might have been revealed. It smote his heart like a switch when he remembered how gently she had borne his scourging speeches, never answering him with a single reproach, only assuring him of her unbounded love (*PBE*, p.357).

Charles P.C. Pettit makes a strong case for the significance of *A Pair of Blue Eyes* in relation to Hardy's developing status as a writer. Pettit argues that following contemporary literary acclaim of *A Pair of Blue Eyes*, Hardy selected the most successful elements for further development in his subsequent novels, and jettisoned the less successful elements, including 'a high proportion of dialogue, particularly verbal fencing between the lovers.'³⁴ Rather than jettisoning such dialogue however, Hardy actually re-used and developed this element in his tragic novels; *The Return of the Native*, *The Mayor of Casterbridge* and *Tess of the d'Urbervilles* each feature a domestic trial scene, in which the hero or heroine is treated as a criminal on trial within the familial environment.

In *The Return of the Native*, again, the crucial scene leading to the climax of the tragedy is a domestic trial scene. Clym, acting in the role of prosecuting lawyer, accuses Eustacia of seeing his mother at the door of their home on a hot August afternoon and not admitting her to the house, after which Mrs Yeobright dies on the heath in the blazing sun. The reader knows from the narrative that Eustacia's culpability is limited. She had not admitted Mrs Yeobright partly because the man whom her mother-in-law had accused

³⁴ Charles P.C. Pettit, 'Merely a Good Hand at a Serial? From *A Pair of Blue Eyes* to *Far from the Madding Crowd*' in Phillip Mallett, ed., *The Achievement of Thomas Hardy* (London: Macmillan, 2000), pp.1-21, p.7

her of having as a lover was present in the house at the time, but also because she heard Clym waken in the other room after Mrs Yeobright knocked and thus had assumed that he was answering the door to her. The scene in which Clym interrogates Eustacia about this day's events is loaded with language and posturing associated with legal process. The trial effect is achieved through the dialogue of verbal parrying and the physical description of the scene in which Eustacia initially sits still and Clym paces to and from her. He adopts the linguistic style of a prosecuting lawyer and is conscious of the theatricality of his role, even addressing an absent third party (*RN*, p.332). Eustacia defiantly observes her position to Clym: "Ah! You think to frighten me," she said with a slight laugh. "Is it worthwhile? I am undefended and alone" (*RN*, p.330). The following witness-box-style interrogation ensues, which, as noted by Sara Malton, is narrated in quasi-legal language:

"How extraordinary!"

"What do you mean?"

"As there is ample time I will tell you, though you know well enough. I mean that it is extraordinary that you should be alone in my absence. Tell, me, now, where is he who was with you on the afternoon of the thirty-first of August? Under the bed? Up the chimney?"

A shudder came over her and shook the light fabric of her night-dress throughout. "I do not remember dates so exactly," she said. "I cannot recollect that anybody was with me besides yourself."

"The day I mean," said Yeobright, his voice growing louder and harsher, "was the day you shut the door against my mother and killed her. — O it is too much — too bad! ... You shut the door — you looked out the window upon her — you had a man in the house with you — you sent her away to die — The inhumanity — the treachery — I will not touch you — stand away from me — and confess every word" (*RN*, p.330).

Marcia Lee Anderson demonstrates that in writing this scene, Hardy drew heavily on Webster's *The White Devil*.³⁵ Anderson has examined the influence of Webster's play on *The Return of the Native*, by juxtaposing several lengthy passages from each text,

³⁵ Marcia Lee Anderson, 'Hardy's Debt to Webster in *The Return of the Native*' in *Modern Language Notes* 54(7), 1939, pp.497-501

showing the striking linguistic similarities between the two texts. Malton's analysis focuses on Clym's construction of Eustacia as a prostitute, which is one of a number of comparisons that can be made with *The White Devil*. Interestingly, it has been suggested that, like Hardy, John Webster held a magisterial role and was probably 'Magister Johannes Webster,' admitted to the Middle Temple on August 1st 1598.³⁶ Hardy not only drew on the characterisation of his heroine from *The White Devil*, but his source text also influenced both the dialogue of the scene and the thematic debate around defence counsel and legal process. As observed by Anderson, Clym's questioning of Eustacia directly echoes that by Monticelso of Vittoria:

Pray you mistress, satisfy me one question:
Who lodg'd beneath your roof that fatal night
Your husband brake his neck?³⁷

Clym's judgment of Eustacia mirrors that of Monticelso. Clym has already judged and condemned Eustacia by her appearance, as she blanched on the entrance of Clym, which instigated his prosecution-style interrogation:

And while she looked the carmine flush with which warmth
and sound sleep had suffused her cheeks and neck dissolved
from view, and the deathlike pallor in his face flew across
into hers. He was close enough to see this, and the sight
instigated his tongue. "You know what is the matter," he
said huskily. "I see it in your face" (RN, pp.329-30).

Both scenes follow the format of a legal trial, but take place within the domestic sphere. *The White Devil* also contains a 'real' trial scene as Vittoria is put on trial for the murder of Camillo. The domestic trial scene of *The Return of the Native*, however, carries the significance of a murder trial, as Eustacia is, in effect, accused of murdering her mother-in-law. Eustacia, though innocent, is judged by appearance, as is Vittoria in *The White Devil*; as soon as the lawyer leaves, Monticelso states:

³⁶ Luke Wilson, 'The White Devil and the Law' in Garrett A. Sullivan Jr. et al., ed., *Early Modern English Drama: a Critical Companion* (New York; Oxford: Oxford University Press, 2006), pp.225-236, p.228

³⁷ John Webster, *The White Devil*, edited by John Russell Brown (London: Methuen, 1996), p.83

I shall be plainer with you, and paint out
Your follies in more natural red and white
Than that upon your cheek.³⁸

Bracciano's judgment of Vittoria in her trial in *The White Devil* relies on appearance rather than words and evidence:

I was bewitch'd;
For all the world speaks ill of thee.³⁹

In *The Return of the Native*, Clym's judgment of Eustacia also relies on appearance and hearsay. Sara Malton argues that Clym eventually succumbs to the community's judgment of Eustacia.⁴⁰ Like Mrs Yeobright, who asks him "How could there be any good in a woman that everyone spoke ill of?" (*RN*, p.334), Clym eventually takes gossip for evidence. Wilson notes that Webster in *The White Devil* directly engages with issues pertaining to the Law:

In Flamenio's and Lodovico's complaints about injustice and judicial corruption, and especially in the scene of Vittoria's arraignment, the play calls attention to serious flaws in legal procedure, as if to advocate some fairly radical reforms – separation of prosecutorial and judicial roles, more systematic evaluation of evidence, equality under the law – that ran against deeply entrenched legal principles and practices.⁴¹

In domestic trial scenes, such as that in *The Return of the Native*, Hardy is likewise directly engaging with the contentious issue of defence counsel. He too advocates the separation of prosecutorial and judicial roles and a more systematic evaluation of evidence.

³⁸ *Ibid*, p.67

³⁹ *Ibid*, p.105

⁴⁰ Sara A. Malton, "'The Woman Shall Bear her Iniquity': Death as Social Discipline in Thomas Hardy's *The Return of the Native*" in *Studies in the Novel* 32(2), 2000, pp.147-64, p.147

⁴¹ Luke Wilson, 'The White Devil and the Law,' p.229. Wilson cites Dena Goldberg, *Between Worlds: A Study of the Plays of John Webster* (Waterloo, Ont.: Wilfrid Laurier University Press, 1987), pp.43-54

Another source for the trial scene in *The Return of the Native* was Nathaniel Hawthorne's *The Blithedale Romance* (1852). Like *The White Devil*, Hawthorne's novel engaged with the practice of interrogation; both show the effects on a woman as the accused individual. Eustacia Vye is modelled on Hawthorne's heroine Zenobia, to whom she is likened by Hardy (RN, p.116). In *The Return of the Native*, Eustacia, like Zenobia, is associated with, and indirectly accused of witchcraft, highlighting the gender issues at play in both domestic trial scenes. Although accused of immorality, both Zenobia and Eustacia are on trial as though they are criminals. Hardy integrates the depiction of his tragic heroine with the legal proceedings in the same manner as Hawthorne in *The Blithedale Romance*. Hawthorne consciously points to a scene in the novel as a domestic trial scene, as it is observed by Zenobia and validated by Coverdale:

“I could even wish to have my trial over again, with you standing by, to see fair-play! Do you know, Mr Coverdale, I have been on trial for my life?”
She laughed, while speaking thus.
But in truth, as my eyes wandered from one of the group to another, I saw in Hollingsworth all that an artist could desire for the grim portrait of a Puritan magistrate, holding inquest for life and death in a case of witchcraft.⁴²

Zenobia is conscious of her treatment as a criminal undergoing interrogative scrutiny and that man's judgment can only be in terms of crime and punishment:

“It was too hard upon me,” continued Zenobia, addressing Hollingsworth, “that judge, jury and accuser, should all be comprehended in one man! I demur, as I think the lawyers say, to the jurisdiction. But let the learned Judge Coverdale seat himself on the top of the rock, and you and me at its base, side by side, pleading our cause before him! There might, at least, be two criminals, instead of one.”⁴³

For both heroines, their experience of the trial scene culminates in a death wish. Zenobia states:

⁴² Nathaniel Hawthorne, *The Blithedale Romance* (London: Penguin, 1983), p.214

⁴³ *Ibid*, p.214

“But it is a woman’s doom and I have deserved it like a woman; so let there be no pity, as, on my part there shall be no complaint. It is all right now, or will shortly be so.”⁴⁴

Zenobia acknowledges the quasi-legal nature of the proceedings and relinquishes the right to make a complaint. Eustacia is not as self-conscious of her role as interrogated accused as is Zenobia. Her deflection of the accusation from herself, to include Clym with a measure of blame, echoes that of Zenobia, although it is not spoken in the language of the Law. Legal language in the scene is imposed from without by Hardy’s narrator who makes up for the deficit in defence and representation. Hardy’s concerns, while gender-related, are perhaps more concerned with the nature of testimony and adequate representation.

The domestic trial scene in *The Return of the Native* can be read as a power struggle between the heroine and the Law, which leads to the heroine taking her own life. Hardy plays on the double meaning of the word ‘undefended’ using both its legal significance and also, as in Eustacia’s meaning, in terms of physical combat. She understands criminal reprisal in terms of physical spectacle and ultimately experiences the trial scene in terms of physical pain:

“O, O, O!” she cried, breaking down at last; and, shaking with sobs which choked her, she sank upon her knees. “O, will you have done! O, you are too relentless — there’s a limit to the cruelty of savages! I have held out long — but you crush me down. I beg for mercy — I cannot bear this any longer — it is inhuman to go further with this! If I had — killed your — mother with my own hand — I should not deserve such a scourging to the bone as this. O, O! God have mercy upon a miserable woman! ... You have beaten me in this game — I beg you to stay your hand in pity! ... I confess that I — wilfully did not undo the door the first time she knocked — but — I — should have unfastened it the second — if I had not thought you had gone to do it yourself. When I found you had not I opened it, but she was gone. That’s the extent of my crime — towards *her*. Best

⁴⁴ *Ibid*, p.223-24

natures commit bad faults sometimes, don't they! — I think they do. Now I will leave you — for ever and ever!" (RN, p.334).

Eustacia's response to this disciplinary environment is expressed in physical terms. She experiences the cross-examination as though it were a physical beating, a relentless crushing. Eustacia's statement to Clym, "You have beaten me at this game," (RN, p.334) implies that she is in a power struggle that she cannot win, in the unfamiliar role of interrogated accused. As with 'undefended,' the word 'beaten' carries the significance of both its meanings. Her death wish as an immediate response to the trial scene is an echo of Zenobia's ideation in *The Blithedale Romance* and of Vittoria in *The White Devil*, at the same juncture:

"It is the simplest thing in the world, with you [men], to bring a women before your secret tribunals, and judge and condemn her, unheard, and then tell her to go free without a sentence. The misfortune is, that this same secret tribunal is the only judgement seat that a true woman chances to be stands in awe of, and that any verdict short of acquittal is equivalent to a death-sentence!"⁴⁵

Find me but guilty, sever head from body,
We'll part good friends. I scorn to hold my life
At yours or any man's entreaty, sir.⁴⁶

The suggestion of death as a result of a failed interrogation of an innocent accused points the blame outward to the accuser. The closing chapters of *The Return of the Native* redirect the focus from Eustacia and the concerns of her interrogation to Clym's indulgence in remorse. Clym's reaction to Eustacia's death strongly echoes that of Knight to the death of Elfride. Both heroes seek punishment as retribution for their harshness as interrogators. Knight seeks divine judgment: "And may God have no mercy upon me! [...] I wish the most abject confession of it before crowds of my countrymen could in any way make amends to my darling for the intense cruelty I have shown her!" (PBE, p.367). Clym states, "My great sorrow is that for what I have done no man or law can punish

⁴⁵ *Ibid*, p.215

⁴⁶ Webster, *The White Devil*, p.82

me!” (RN, p.377). In both scenes, the attention is diverted away from the death of the heroine to highlight Knight and Clym’s responsibility.

Hardy’s pointed depiction of the failure of the Law culminated in *Tess of the d’Urbervilles*. Formerly this theme was treated on a metaphorical level; in *Tess*, the failure of the Law has the most tragic results as Hardy presents a heroine guilty of murder, for which the Law exacts a retributive punishment. However the trial scene is written out of the text and there is thus no representation of legal defence. Of all of Hardy’s novels, *Tess of the d’Urbervilles* is that which is most like a legal representation, a court case itself, and thus can be read through Jonathan Grossman and Kristin Brady’s analysis of the novel as mirroring a courtroom trial. Notably, in *Tess of the d’Urbervilles*, the narrator’s role of defence is more self-conscious yet the narrator is much less omniscient than in Hardy’s former novels, frequently choosing not to fully represent scenes in which we wish to assess culpability. Mirroring the novels of Wilkie Collins, notably *The Woman in White* (1860) and *The Moonstone* (1868), the narrative provides conflicting testimonies regarding Tess’s culpability in the two contentious scenes of the novel, the rape/seduction and the murder of Alec.⁴⁷ Hardy sets up a legal debate from the opening of the novel with the then contentious subtitle ‘A Pure Woman.’ Hardy even places his own name in the title (‘faithfully presented by Thomas Hardy’) reflecting a closeness between the author and narrator acting as defence representation self-consciously under oath. Elliott Felkin records:

Hardy said of course in writing one had to keep up the immense illusion. In one’s heart of hearts one did not of course really think one’s heroine was as good and pure as all that, but then one was making out a case for her before the world.⁴⁸

Hardy’s narrator in *Tess of the d’Urbervilles* and his persistent defence of Tess voices the ideological agenda of the author in exposing the revenge style nature of the contemporary legal system. As in *The Return of the Native* and *The Mayor of Casterbridge*, Hardy’s

⁴⁷ This is discussed in further detail in Chapter Four.

⁴⁸ Michael Millgate, *Thomas Hardy: His Career as a Novelist* (London: Macmillan, 1994), p.268

narrator presents exculpatory evidence that the tragic heroine does not articulate. The closing scene functions as an appeal against the justice system that hanged Tess.

The scene in which Tess's letter of confession gets lost under Angel's carpet, often criticised for being an unnecessary unfortunate coincidence, actually serves to place emphasis on Tess's confession as a speech act on which her future happiness rests. Tess's fate depends crucially on her own self-representation. At times Tess undermines her own narrator's defence, as in her speech acts to Alec noted above, by accepting the full amount of blame for her actions. The scene that follows, in which Angel questions Tess about her confession, is inscribed with legal discourse from the beginning of Phase the Fourth, which begins at the close of her confession:

Her narrative ended; even its re-assertions and secondary explanations were done. Tess's voice throughout had hardly risen higher than its opening tone; there had been no exculpatory phrase of any kind, and she had not wept (*TD*, p.254).

Tess's defence is that she believed that Angel could divorce her. A further confession which is 'wrung from her, and not volunteered,' (*TD*, p.265) echoes that of Clym's interrogation of Eustacia, with Angel as prosecuting lawyer:

"What were you thinking of doing?" he inquired.
"Of putting an end to myself."
"When?"
She writhed under this inquisitorial manner of his. "Last night," she answered.
"Where?"
"Under your mistletoe."
"My good —! How?" he asked sternly (*TD*, p.264).

James Kincaid notes Angel's interest in narrative details (When? Where? How?), through which focus is on recreating the scene and acquiring facts.⁴⁹ This line of questioning clearly fails to assess Tess's emotional state and self-sacrificing motivation of freeing

⁴⁹ James Kincaid, 'Absence, Death and Eroticism in *Tess*' in Regina Barreca, ed., *Sex and Death in Victorian Literature* (London: Macmillan, 1990), pp.9-31, p.27

Angel from her. Tess's alternative proposition of divorce meets the response "You don't understand the law" (*TD*, p.264) as Angel is fully in character as prosecuting lawyer. Tess, like Eustacia, is judged by appearance, not by argument: 'He argued erroneously when he said to himself that her heart was not indexed in the honest freshness of her face: but Tess had no advocate to set him right' (*TD*, p.261). By contrast, 'she made his way easy for him, and she herself was his best advocate' (*TD*, p.278). It is only in Brazil, when Angel remembers and reassesses the trial scene when Tess withheld any defence or entreaty that we are told that 'from being her critic he grew to be her advocate' (*TD*, p.364).

In *Tess of the d'Urbervilles*, the narrator suggests on a number of occasions that this characteristic silence and acceptance of blame is a characteristically female response. The narrator emphasizes that Tess could have won Angel over if she had defended herself: 'She remained mute, not knowing that he was smothering his affection for her' (*TD*, p.257), and again:

Tess's feminine hope — shall we confess it — had been so obstinately recuperative as to revive in her surreptitious visions of a domiciliary intimacy continued long enough to break down his coldness even against his judgment. Though unsophisticated in the usual sense, she was not incomplete; and it would have denoted deficiency of womanhood if she had not instinctively known what an argument lies in propinquity. Nothing else would serve her, she knew, if this failed. It was wrong to hope in what was of the nature of strategy, she said to herself: yet that sort of hope she could not extinguish (*TD*, p.269).

The narrator notes:

There was, it is true, underneath, a back current of sympathy through which a woman of the world might have conquered him. But Tess did not think of this; she took everything as her deserts and hardly opened her mouth (*TD*, p.267).

The narrator perhaps judges Tess's silence favourably at this point, as she does not use the tactics that belong to a 'woman of the world.' There is also a suggestion that the legal discourse is not available to women (for women 'argument lies in propinquity') as it is to men. The narrator suggests that Angel has superior skill in legal disputation, as he considers an argument in Tess's favour, which she had not used herself:

She [...] could not withstand his argument. But with the self-combating proclivity of the super-sensitive, an answer thereto arose in Clare's own mind, and he almost feared it. It was based on her exceptional physical nature; and she might have used it promisingly. She might have added besides: "On an Australian upland or Texan plain, who is to know or care about my misfortunes, or to reproach me or you?" Yet, like the majority of women, she accepted the momentary presentment as if it were the inevitable (*TD*, p.269).

Tess's only option in this domestic trial scene of winning Angel around through physical propinquity fails and this is expressed in legal language: 'She found that her personality did not *plead her cause* so forcibly as she had anticipated' (*TD*, p.270. emphasis added). When Tess does attempt to defend herself she fails and the narrator notes that 'she went on pleading in her distraction; and perhaps said things that would have been better left to silence' (*TD*, p.258). Tess's failure in this trial scene is primarily a failure of language. As in *The Return of the Native*, when Eustacia's language under interrogation is reduced to the monosyllabic "O, O, O," Tess's mouth in her trial scene 'had the aspect of a round little hole' (*TD*, p.256). Richard Posner addresses the connection between Law and gender to conclude the Law is a male domain, with the distinction between head and heart reflected in the language that men use to express the working of the Law.⁵⁰ Catherine MacKinnon also refers to the exclusionary nature of legal discourse particularly for women:

To most women, the law is a foreign country with an unintelligible tongue, alien mores, secret traps,

⁵⁰ Richard Posner, *Law and Literature* (Cambridge, MA.; London: Harvard University Press, 1998) pp.121-26

uncontrollable and unresponsive dynamics, obscure but rigid dogmas, barbaric and draconian rituals, and consequences as scary as they are incomprehensible. Actually, this is true for most men as well.⁵¹

MacKinnon's additional inclusion suggests that, to a lesser extent, the Law also fails men. In *Tess of the d'Urbervilles*, language not only fails Tess in her trial scene, but also Angel when he comes to make an expressive evaluation of Tess and the circumstances which lead her back to Alec: "Ah, it is my fault!" said Clare. But he could not get on. Speech was as inexpressive as silence' (TD, p.401). Legal language is not merely represented as the domain of men, but language fails men in the context of so complex a legal and moral situation. Angel claims that Tess does not understand the Law, but equally, the Law has not the language with which to allow an understanding of Tess. Charlotte Thompson suggests that the language of Hardy's narrative in *Tess of the d'Urbervilles* provides a competing representative discourse to that of codified archaic Law:

Among the many forces that Hardy invites us to hold responsible for Tess's tragedy, her society's language constitutes one of its most potent, yet most elusive instruments. An old language, by fixing minds in old, preformed mental structures, can vie with old genres in the ability to perpetuate the past by impelling the mind toward predetermined ends. Conversely, language innovatively used in fresh, creative imagining has the power to reorganise those mental structures and to reform the realities they induce.⁵²

As in *The Return of the Native* and *The Mayor of Casterbridge*, the heroine's failure to self-represent is followed by a death wish as a result of the experience of interrogation within a domestic trial scene. There is a suggestion that, following the confession, Tess plans suicide as she leaves following Angel, 'putting out the candles as if she were never coming back' (TD, p.257). Tess blames herself for presenting herself to Angel as 'a

⁵¹ Catherine MacKinnon, *Women's Lives, Men's Laws* (Cambridge, MA.: The Belknap Press of Harvard University Press, 2005), p.32

⁵² Charlotte Thompson, 'Language and the Shape of Reality in *Tess of the d'Urbervilles*' in Peter Widdowson, ed., *Tess of the d'Urbervilles* (New York: St. Martin's Press, 1993), pp.109-28, pp.109-110

guilty woman in the guise of an innocent one' (*TD*, p.255) and mistakenly trusts to his sense of justice: "because you know best what my punishment ought to be" (*TD*, p.278). The issue is not merely of gender and language, but, as noted by Shumaker and Kalikoff, of class. Tess's 'dumb and vacant fidelity' recalls the role of feudal serf that she adopts in calling herself Angel's 'wretched slave.'⁵³ The narrator expresses her wish to submit to his sense of justice through her wishing to act as a subservient subject: 'Her one desire, so long resisted, [was] to make herself his, to call him her lord, her own — then, if necessary, to die' (*TD*, p.239). She expresses a wish to "obey [him] like [his] wretched slave, even if it is to lie down and die" (*TD*, p.256), adding

"[T]o do it with my own hand is too good for me, after all. It is you, my ruined husband, who ought to strike the blow. I think I should love you more, if that were possible, if you could bring yourself to do it, since there's no other way of escape for 'ee" (*TD*, p.265).

The lack of a legal trial scene in which Tess would be able to represent herself and the reduction of Tess to the symbol of the black flag, points to her role as a sacrificial marginalised figure, used as an example by the British justice system. It may be that absence of a trial scene was with the aim of minimising controversy. The critique of the justice system, with the inclusion of the domestic trial scene, remains on a metaphorical level. With the figure of 'The President of the Immortals,' Hardy substitutes an abstract supernatural figure as representative of the operation of the legal system. The 'Aeschylean phrase' is intended to personify 'the forces opposed to the heroine' as if their operations were human deeds. The narrators of *The Return of the Native* and *The Mayor of Casterbridge* show a willingness to condemn and alienate their tragic heroes. In *Tess*, however, the narrator shows an affinity with Tess; the increased sympathy allows for a harsher exposition and condemnation of the Law. The ending of *Tess of the d'Urbervilles* poignantly expresses the private life of the heroine as a public spectacle, a punishment as a deterrent to protect society. The exclusion of the public trial from the ending highlights the suppression of Tess's actual story, which would disrupt the

⁵³ Jeanette Shumaker, 'Breaking with the Conventions: Victorian Confession Novels and *Tess of the d'Urbervilles*' in *English Literature in Transition* 37 445-462, p.450

semiotic display of civic authority. Trial is thus a failure in both the private and public spheres through failure of adequate representation. Through showing the injustice of a fictional domestic trial scene Hardy shows by extension the failure of any trial that does not allow for legal defence of the accused.

While the narrator mounts an exculpatory defence of Tess in *Jude the Obscure* the narrator is at a much greater remove and chooses not to have access to Sue's consciousness. Sue, who is variously described as 'puzzling and unstateable' (*JO*, p.240) 'a lovely conundrum' (*JO*, p.156) resists definition and withholds explanation of her behaviour. She often chooses to express her feelings and explain her behaviour not vocally but in writing and she evades questions when Jude subjects her to searching cross-examinations on the nature of her relationship with Phillotson: 'It was a question which in the circumstances Sue did not choose to answer.' (*JO*, p.185). Increasingly aware of Jude's efforts to understand her intentions, Sue uses legalese to express her intentional evasion of questioning:

"You have not seen Mr. Phillotson today?" he ventured to inquire.
"I have not. But I am not going to be cross-examined about him; and if you ask anything more I won't answer." (*JO*, p. 183)

As Jude persists in trying to 'get a confession' (*JO*, p.274), Sue objects to the interrogative attitude he assumes when she feels he should be on her side:

But now that I have nobody but you, and nobody to defend me, it is very hard that I mustn't have my own way in deciding how I'll live with you, and whether I'll be married or no!" (*JO*, p.274)

She expresses her sense of her isolation in the context of argumentation: "I *wish* I had a friend here to support me; but nobody is ever on my side!" (*JO*, p.172) While Sue is skilled in evading questioning and confession in terms of her relationship with Jude, ultimately she capitulates to conventional morality, confessing a sense of her sinfulness to Jude when not under duress. This capitulation to a pseudo-legal extraction of

sinfulness and guilt is depicted as a mental breakdown in contrast to her mental clarity when she rejects of the process of interrogation.

As argued by Jonathan Grossman, narrative provided a format for representation that both mimicked and competed with trial. With the exception of *Jude the Obscure* Hardy presented pseudo-legal cases to the reader through narrative as an alternative and competing representation, one that allowed for a fuller representation of motive and action within ethically complex individual situations. The narrative arena for representation afforded by the realist novel, filled a deficit in trial or allowed for representation of non-criminal cases. As noted by Jan-Melissa Schramm:

It is equally arguable that authors of fiction share this interest in what falls outside the law, that they somehow require a legal lacunae in order to find their own imaginative space in which to pursue their own quest for justice.⁵⁴

Hardy's narratives seek to fill the deficit of legal trial which reduces ethically complex cases to facts and appearance rather than to a comprehensive exploration of character. Hardy's narratives question the primacy conferred by trial procedure to first-hand testimony. Through his narrators he provides alternative third-person representation, depicted through non-legal English in contrast to legal language, which is depicted as elitist, male and too reductive for cases of ethical complexity. Hardy's narratives make up for the deficit in the first person narrative in the domestic trial scene by providing an omniscient representation of plot and character. Furthermore, as will be argued in Chapter Four, Hardy drew on broadside ballads representing extenuating circumstances such as madness and poverty in the narrative defence of his tragic heroes.

⁵⁴ Schramm, *Testimony and Advocacy in Victorian Law*, p.10

Public interest in crime frequently determined the types of novel written in the nineteenth century. Chapter Three outlined the influence of trial proceedings on Hardy's novels, and Hardy's 'Facts' notebook collates numerous newspaper reports on courtroom cases.¹ Another source of Hardy's sensational plots that has not been explored at length is the thriving broadside ballad industry. Broadside ballads were verses on a topical subject on a printed sheet composed to be sung to a well-known tune. The most commercially successful broadsides were 'gallows literature,' the 'last goodnight' or 'last dying speeches' of the condemned. This genre flourished in the context of the public execution immediately after which a ballad describing the crime and execution was written, printed, sung and sold on the streets.² Norman Arkans relates how one contemporary reviewer emphatically placed Hardy 'squarely in the centre of the broadside ballad tradition.'³ As Beth Kalikoff notes, 'Although the popularity of these inexpensive broadsides faded in the 1870s with the increased accessibility of newspapers, they were thriving in Hardy's late adolescence.'⁴ Hardy was almost certainly familiar with the broadside ballad tradition and specific broadsides, if indirectly through familial recollections. He records in his autobiography of how impressed John Galsworthy had been by his precise memory of what his mother had said when he was 'about the age of six' concerning the hanging of James Bloomfield Rush.⁵ Rush murdered his landlord, Isaac Jermy, and his son, wounding Jermy's wife and maid, after forging a paper cancelling the mortgage for £5000 that he owed to Jermy. Michael Millgate argues that Jemima Hardy gleaned the story from 'The Sorrowful Lamentation and Last Farewell of J.B. Rush, who is ordered for execution on Saturday next, at Norwich Castle.'⁶ Hardy was certainly familiar with

¹ William Greenslade, ed., *Thomas Hardy's 'Facts' Notebook: a critical edition* (Aldershot: Ashgate, 2003)

² Henry Mayhew, *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*, vol. 1 (New York: Dover, 1968), p.275

³ Quoted by Norman Arkans, in 'Hardy's Narrative Muse and the Ballad Connection' in Norman Page, ed., *Thomas Hardy Annual* 2, 1984, pp.131-156, p.135

⁴ Beth Kalikoff, 'The Execution of Tess d'Urberville at Wintonchester' in William B. Thesing, ed., *Executions and the British Experience from the Seventeenth to the Twentieth Century: a collection of essays* (Folkstone: McFarland, 1991), pp.111-121, p.115

⁵ F.E. Hardy, *The Life of Thomas Hardy*, p.475

⁶ Michael Millgate, *Thomas Hardy: A Biography* (Oxford: Oxford University Press, 1982), p.21

the rites of execution, which often included the penitential confession of the condemned. In his 'Facts' notebook, Hardy records an account of an execution that took place at the height of Chartist incendiarism following an elaborate procession and the 'impressive address' given by Reverend Liefchild.⁷ Dorset magistrates and authorities were anxious to curb the rural unrest and utilised the spectacle of state execution to deter offenders and maintain public order in rural Dorset. As witnessed by Hardy, an integral element of this spectacle was the morally instructive coda, the 'impressive address' intended to instil the correct reaction to the event by the crowd.

As argued in Chapter Three, Hardy was interested in the representation of the accused, who lacked a legal voice in the contemporary judicial system and whose narrative was suppressed and controlled. In the present chapter, I argue that it is through a subversive rather than straightforward appropriation of the conventions of broadside ballads, particularly dying speeches, that Hardy, in his novels, critiques the conventions of execution with its integral element of state-controlled confession. The narrative of Hardy's novels mirrors the heteroglossic voice of the ballad, which encompasses the literary modes of confession, autobiography, sensation fiction and tragedy; this allows for the exploration within the text of the narrative voice of the accused. Hardy engages with contemporary legal issues encompassing madness, class and gender issues through presenting a subversive working-class voice, characteristic of broadside ballads.

The dissemination of a written account of the crime and last words of the condemned took place immediately after the execution in the form of a broadside ballad.⁸ The broadside account of execution is formulaic: the first half is written in prose, giving specific details of the particular murder described; the second half includes the 'copy of verses' which, according to the established custom, the criminal composes in the condemned cell. The verses include a moral coda, which is likely to have been appended, or at least influenced, by representatives of Church and State. Radzinowicz states that

⁷ Greenslade, ed., *Thomas Hardy's 'Facts' Notebook*, 171a-173, pp.249-51

⁸ Charles Hindley, ed., *Curiosities of Street Literature* (London: The Broadsheet King, 1966), p.159

prison officials 'exerted all their influence to induce the delinquent to admit his guilt'⁹ and refers to John Fielding's plan for control over the content of broadsides:

According to his plan the police should be entrusted with the propagation of moral influences, by issuing and distributing to the ballad singers literature by which they could convey, in language familiar to the labouring classes, moral lessons on the advantages of industry and frugality, the happiness of a good husband, a good father and an honest man, and the pleasure of abstention from public houses.¹⁰

The placing of the gallows behind prison walls resulted in the private experience of execution being solely mediated through symbol and written text. In the years immediately following the abolition of public execution, 1868 and 1869, broadside ballads continued to be written for private executions;¹¹ they self-consciously refer to the translation of execution from the public arena to the private.¹² Broadsides continued to be utilised and controlled by state authorities as an essential semiotic expression of the moral lesson of execution. Foucault asserts that

If these accounts were allowed to be printed and circulated, it was because they were expected to have the effect of an ideological control – the printing and the distribution of these almanacs, broadsheets, etc, was in principle subject to strict control.¹³

As Foucault implies, broadsides were controlled in principle, but not always in practice. Ellen O'Brien has revealed the subversive heteroglossic nature of broadside ballads,

⁹ Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, vol. 3, p.178

¹⁰ *Ibid*, p.275

¹¹ There are conflicting accounts of the popularity of execution ballads after hanging took place within the confines of the prison. While Hindley here remarks that it effectively ended the trade, James Greenwood, writing of 'gallows literature' states that 'the iniquity in itself is as vigorous and hearty as ever, and every week renews its brimstone leaves.' Cf. Hindley, ed., *Curiosities of Street Literature*, p.160; James Greenwood, *The Seven Curses of London* (Oxford: Basil Blackwell Publisher Limited, 1981), p.87

¹² See 'Life, Trial, Confession and Execution of Martin Brown, For the Diabolical Murder on Newmarket Hill near Lewes' and 'Execution of Alexander Mackay' in Hindley ed., *Curiosities of Street Literature*, pp. 232, 233

¹³ Michel Foucault, *Discipline and Punish: the Birth of the Prison* (Harmondsworth: Penguin, 1979), pp.67-68

which allows for the valorization of the criminal, although this is contained within the state-controlled depiction of the moral lesson of execution.¹⁴ As noted by Beth Kalikoff the textual representation of execution could not be a straightforward representation of conventional morality, as when ‘the nameless narrator concludes with a moral admonition or tag,’ it is ‘in a language much weaker than the full and energetic description of the murder that precedes it.’¹⁵ The colourful, often sympathetic, depiction of the criminal highlights that the genre of broadside ballads constitutes a battle for representation between the condemned prisoner and the state. Foucault observes the binary styles of depicting the criminal in execution narratives:

If the condemned man was shown to be repentant, accepting the verdict, asking both God and man for forgiveness for his crimes, it was as if he had come through some process of purification: he died, in his own way, like a saint. But indomitability was an alternative claim to greatness: by not giving in under torture, he gave proof of a strength that no power had succeeded in bending.¹⁶

The authors of broadside ballads maintain the psychological interest of their accounts of crime by capitalising on the element of power struggle between state and offender. In doing so, they appealed to their contemporary audience, which primarily consisted of working class readers with an avid interest in crime.

Although 1868 heralded the immanent end of the profitable broadside industry with the abolition of public execution, it could not curb public interest in the psychology of the criminal facing the gallows, which found a new locus in the sensation novel. The melodramatic plots of sensation fiction were frequently based on accounts of real crime. Wilkie Collins related to a personal friend his method of collecting sensational plot material from contemporary real-life accounts of crime:

¹⁴ Ellen O’Brien, “‘The Most Beautiful Murder’: The Transgressive Aesthetics of Murder in Victorian Street Ballads’ in *Victorian Literature and Culture* 28(1), 2000, pp.15-37; Ellen O’Brien, “‘Every Man Who Is Hanged Leaves a Poem’: Criminal Poets in Victorian Street Ballads’ in *Victorian Poetry* 39(2), 2001, pp.319-339

¹⁵ Beth Kalikoff, *Murder and Moral Decay in Victorian Popular Literature* (Ann Arbor, Michigan: UMI Research, 1986), p.14

¹⁶ Foucault, *Discipline and Punish*, p.67

I was in Paris, wandering about the streets with Charles Dickens, amusing ourselves by looking into the shops. We came to an old book-stall, half shop and half store, and I found some dilapidated volumes and records of French crime – a sort of French Newgate – Calendar. I said to Dickens, ‘Here is a prize!’ So it turned out to be. In them I found some of my best plots.¹⁷

As Hardy did not personally witness court proceedings until 1884 it is likely that for his 1871 sensation novel *Desperate Remedies* he drew on the same sources as sensation writers such as Collins, who collated material from newspapers and broadsides. Hardy referred to ‘a curious obsession’ with newsprints, claiming that for two years it was the only prose he read.¹⁸ Much of Hardy’s reading was collated in his ‘Facts’ notebook. The nature of the stories collected in this notebook can be inferred from the index, which features: adultery, divorce, arson, babies mixed-up, bodysnatchers, escapes from prison, fire, homicide, infanticide, poison, poisoning, punishment, robbery, smuggling and wife sale.¹⁹ This reflects much of the typical content of the sensation novel, which was a plot-driven suspense thriller, typically with crimes and secrets concerning an assortment of bigamy, murder, adultery, illegitimacy, impersonation and insanity. Like the broadside ballad, sensation fiction was a highly successful commercial venture, which exploited its audience’s fascination with details of crime and execution.

The relationship between the broadside tradition and sensation fiction can be seen in a marked shift in the genre of the broadside in the 1840s when elements later recognisable in sensation fiction become evident. While the prose narrative remains for the most part factual and dispassionate in tone, the verses exhibit the combination of titillation and moral conclusion which characterises the sensation fiction novel which flourished in the 1860s. The verses commonly contain a highly visual depiction of the crime with

¹⁷ Wybert Reeve, ‘Recollections of Wilkie Collins,’ *Chambers Journal* 9, p.458, quoted by Alma Elizabeth Murch in *The Development of the Detective Novel* (London: Peter Owen, 1958), p.103

¹⁸ James Gibson, ed., *Thomas Hardy: Interviews and Recollections* (Basingstoke: Macmillan Press, 1999), p.201

¹⁹ Greenslade, *Thomas Hardy’s ‘Facts’ Notebook*, pp.363-65

emphasis on the effect on the imagined spectator's senses. For example, 'Verses on Daniel Good' begins:

Of all the wild deeds upon murder's black list
Sure none is so barbarous and cruel as this
Which in these few lines unto you I'll unfold
The recital's enough to turn your blood cold.²⁰

The 'last dying speech,' or verses supposedly written by the criminal on his last night before execution, was not always an endemic part of the broadside, but became conventional from about 1840, when the narrative voice of the verses changes from a third person narrative representation to a first person account of the crime for which the accused faces execution. This change in narrative viewpoint allows for increased sympathy for the condemned criminal in both first-person broadside accounts and in the sensation novel.

While the sensation novel has its roots in street literature, it was not subject to the same ideological control as was the broadside industry. Foucault relates the disappearance of the broadsheets to the emergence of crime literature²¹ and argues that

it was not only the broadsheets that disappeared with the birth of a literature of crime; the glory of the rustic malefactor and his somber transformation into a hero by the process of torture and execution went with them.²²

However, while broadside ballads could render a sympathetic account of a murderer, they were constrained by the conventional closing lines of moral coda. By contrast, the form of the novel in fact allowed for increased authorial control, removed from state control, over the psychological depiction and narrative representation of the condemned; the sensation novel could give a sympathetic portrait of a murderer without conventional moral tags. This was particularly so in the case of the female transgressor. Lyn Pykett

²⁰ 'Verses on Daniel Good' in Hindley, ed., *Curiosities of Street Literature*, p.195

²¹ Foucault, *Discipline and Punish*, p.67

²² *Ibid*, p.69

argues that sensation writers, such as Wilkie Collins, Elizabeth Braddon and Mrs Henry Wood, 'negotiate and, sometimes, appropriate the regime of the proper feminine.'²³ They subvert the traditional 'angel in the house' construction to reveal that under their passive exterior lurked 'criminals, madwomen and domestic fiends.'²⁴ The depiction of the transgressive female involved an inversion of the dominant code to create a sympathetic portrait. Lyn Pykett states that

The central female characters of the women's sensation novel are of two main types: active, assertive women, who convey a sense of the threat of insurgent femininity trying to break out of the doll's house of domesticity, and passive, dependent women, who are imprisoned by it, unable to articulate their sense of confinement, and driven to desperate measures.²⁵

Although, as Pykett argues, the narrative resolution of sensation novels frequently involved the feminization of the transgressive female,²⁶ the narrative also involves an inversion of the dominant code that proscribes passivity and instead celebrates the 'nineteenth century madwoman [as] the deviant, energetic woman who defies familial and social control.'²⁷ The precedence accorded to the villain in sensation fiction in terms of psychological interest mirrors that of the broadside ballad. Furthermore, the first-person account of the crime is a form of defence, which, as argued in Chapter Three, may be delayed or repressed, and ultimately controlled by a third-person narrator.

In 1871, embarking on his literary career, Hardy consciously adopted the style of the sensation novel, characteristics of which include 'emphasis on mystery, secrecy and the resurgence of scandalous events from the past [...]. Its themes revolve around sexuality, dealing with illegitimacy, adultery, bigamy and crimes of passion.'²⁸ In *Desperate*

²³ Lyn Pykett, *The "Improper" Feminine: the Women's Sensation Novel and the New Woman Writing* (London: Routledge, 1992), p.21

²⁴ *Ibid.*, p.9

²⁵ Lyn Pykett, *The Sensation Novel from The Woman in White to The Moonstone* (Plymouth: Northcote House in association with the British Council, 1994), p.49

²⁶ Pykett, *The Improper Feminine*, p.85

²⁷ Pykett, *The Sensation Novel*, p.20

²⁸ Catherine Neale, 'Desperate Remedies: The Merits and Demerits of Popular Fiction' in *Critical Survey* 5(2) 1993, pp.117-122, p.116

Remedies, Hardy worked in as many sensational plot devices as possible: the villain Aeneas Manston is suspected of attempted bigamy until it is discovered that he accidentally murdered his first wife Eunice and made it appear that she had died in a fire. He then resorts to making his mistress impersonate Eunice, when it is discovered she did not die. The secret is revealed in the manner of detective fiction and the novel ends with the marriage of Edward Springrove and the heroine Cytherea Graye. In his 1889 preface to *Desperate Remedies* Hardy wrote:

The principles observed in its composition are, no doubt, too exclusively those in which mystery, entanglement, surprise, and moral obliquity are depended on for exciting interest; but some of the scenes, and at least one of the characters, have been deemed not unworthy of a little longer preservation.²⁹

While Hardy admitted that he had relied heavily on sensational plot devices, he drew attention to the psychological development of ‘at least one of the characters,’ most likely meaning the villain, Aeneas Manston. Noting the complexity of the characterisation of Manston, Roberts suggests that ‘Hardy would have liked to do more with him than the structure of the novel permitted.’³⁰ As noted by Bulaila, criticism is not projected entirely onto Manston but is partly redirected toward marriage laws:

Desperate Remedies, as a whole, is a story of man’s protest against his society. In anticipation of *The Woodlanders* and *Jude the Obscure*, the story “silently” examines the question of divorce. Had Manston been able to obtain a divorce from his wife, he would have certainly saved his life and his love for Cytherea.³¹

Thus Bulaila argues that the narrative betrays sympathy for Manston:

²⁹ Thomas Hardy, *Desperate Remedies*, edited by P.N. Furbank (London: Macmillan, 1974), p.35

³⁰ Patrick Roberts, ‘Patterns of Relationship in *Desperate Remedies*’ in *Thomas Hardy Journal* 8(2), 1992, pp.50-57

³¹ A. Aziz M. Bulaila, ‘*Desperate Remedies*: Not Just a Minor Novel’ in *Thomas Hardy Journal* 14(1), 1998, pp.65-74

Although he appears on the surface to be the black villain who murders his wife, commits adultery with another woman, and bigamy with a third before he kills himself, he is initially a good man and a victim of social misfortune. Critics have condemned often condemned him for his ill-doings without considering his psychological problems, as Hardy undoubtedly does.³²

Although *Desperate Remedies* ends with the marriage of Edward and Cytherea, the tone of the close of the novel is dominated by the representation of the condemned Manston as he faces execution. The projected execution of Manston is to be private and immediate, taking place within prison walls and beyond the gaze of spectator or reader (*DR*, p.372). Manston, however, cheats the authorities and takes his own life. Trial records that depict the experience of the criminal waiting for execution refer commonly to measures taken to prevent suicide before execution. This can be seen, for example, in the account of the night before Fagan's execution in Dickens's *Oliver Twist*:

Here, he was searched, that he might not have about him the means of anticipating the law; this ceremony performed, they led him to one of the condemned cells, and left him there — alone.³³

Manston's suicide in prison is thus not realistic, but Hardy sacrifices historical verisimilitude for the inclusion of a suicide note in the style of gallows literature. Gallows literature was ostensibly composed by the criminals in the condemned cell, usually the night before the execution, and 'found' the next morning when the jailer came to bring the condemned criminal to the scaffold. Manston is described as having spent seven hours preparing his confession, which is discovered with his self-executed body the following morning. The title of Manston's suicide note of confession, 'Last Words,' echoes the conventional titles of the broadsides, often called the 'Last Goodnight' of the condemned. In this confession Manston outlines his crime and resigns himself to death. Like 'gallows' speeches of confession it both summarizes the account of the crime and

³² *Ibid*, pp.70-71

³³ Charles Dickens, *Oliver Twist: or, the Parish Boy's Progress*, edited by Philip Horne (Harmondsworth: Penguin Books, 2003), p.443

represents, through the words of the offender, the psychology of the criminal facing execution.

While Hardy adopts the convention of the ritual confession in Manston's 'Last Words,' the death and narrative account of the crime undermines rather than upholds the state's authority. The traditional confessional account was heavily influenced by the prison chaplain, or ordinary, to instill a sense of religious awe into the audience as a corollary to the state's power to execute. In many cases, as J.A. Sharpe attests, 'the named authors of execution pamphlets were most often clergymen who had taken a special interest in a particular case.'³⁴ Henry Goodcole, part-time ordinary at Newgate in 1618, stated that

dying men's wordes are ever remarkable, & their last deeds memorable for succeeding posterities, by them to be instructed, what virtues or vices they followed and imbraced, and by them to learne to imitate that which was good, and to eschew evill.³⁵

Sharpe refers to seventeenth-century England, but as late as 1898, Oscar Wilde, in 'The Ballad of Reading Gaol,' writes of the influence of the chaplain: '[T]wice a day the chaplain called/ And left a little tract'.³⁶ In his study of Victorian prison narratives Sean Grass argues that 'prisoner narratives were finally shaped, at least partly, by "official" political demands.'³⁷ The chaplain's influence seems to have been controlled by the state in the interests of confession publication. Ian Maxted writes of the role of publisher Elizabeth Brice in the production of 'gallows literature':

Although the chaplain put the condemned into a proper frame of mind to make his confession, it was normally left

³⁴ J.A. Sharpe, 'Last Dying Speeches: Religion, Ideology and Public Execution in Seventeenth-Century England' in *Past and Present* 107, 1985, pp.144-167, p.148

³⁵ Henry Goodcole, *A True Declaration of the Happy Conversion, Contrition and Christian Preparation of Francis Robinson, Gentleman, who for Counterfeiting the Great Seale of England was Drawen, Hang'd and Quartered at Charing Cross, on Friday Last, being the Thirteenth Day of November 1618* (London, 1618), quoted in Sharpe, 'Last Dying Speeches,' p.150.

³⁶ Oscar Wilde, 'The Ballad of Reading Gaol' in *Complete Stories, Plays and Poems of Oscar Wilde* (London: Michael O'Mara Books Limited, 1990), pp.816-32, p.821

³⁷ Sean Grass, *The Self in the Cell: Narrating the Victorian Prisoner* (New York; London: Routledge, 2003), p.35

to the printer or one of his agents to take it down in writing or, if the prisoner chose to write it himself the minister would give it to the printer. At times Brice was able to persuade the prisoner when the chaplain could not, and one of the main arguments he used was 'that it being to be published, it was probably the best amends or restitution, he could in his circumstances make to an injured and offended world in general, and it might be so drawn up as to tend to the correction and edification, as well as information, of numbers, even at a distance.' The public, thought Brice, had a right to expect a confession, something more important to him than his 'righteous gain.'³⁸

Brice's motivation was financial and she knew her audience desired a confession that would relate the circumstances of the crime. However, authorities staging the execution also had an interest in its textual representation. The author of 'The Heroes of the Guillotine and the Gallows' quotes a contemporary reporter of a private execution, who sums up the desired response to the experience of private execution:

'Is the execution under the new law more *impressive* than under the old?' We answer decidedly in the affirmative. The applause or censure of the mob, the desire to 'die game' before his friends, had, it is acknowledged, the worst influence on the prisoner, and the solemn stillness of the little yard, with its handful of spectators, *must have been impressive* in the most 'awful degree' (emphasis added).³⁹

The interest of the publishers in providing a confession was matched by that of the criminal seeking the opportunity to represent their dying testimonial of defence or defiance. Thomas Laqueur observes that

It is testimony to the cultural power of the normative role, to its capacity to take over the condemned's psyche, that, in the absence of coercion, so many died as the Ordinary and the secular authorities might have wished. But a great many did not. 'Generally speaking' as Nietzsche points out in his

³⁸ Ian Maxted, *A History of the Book in Devon*. 48. *Popular Literature in the Eighteenth Century* (Devon, 2001) at <http://www.devon.gov.uk/localstudies/114905/1.html>, accessed on 17 Aug. 07

³⁹ 'The Heroes of the Guillotine and the Gallows or The Awful Adventures of Askern, Smith and Calcraft, the Three Rival Hangmen,' in *Curiosities of Street Literature*, p.4

genealogy of the 'bad conscience', 'punishment makes men hard and cold...it sharpens the feeling of alienation, it strengthens the power of resistance.'⁴⁰

An element of gallows literature is a plea to God for forgiveness. This is unsurprisingly absent in Hardy's version of gallows literature, for which he substitutes a cosmic philosophy regarding immanent death:

I am now about to enter my normal condition. For people are almost always in their graves. When we survey the long race of men, it is strange and still more strange to find that they are mainly dead men, who have scarcely ever been otherwise (*DR*, p.377).

Hardy subverts the conventions of the state-controlled broadside to reveal the failure of private execution to provide a moral lesson and to show Manston's rejection of the world that has condemned him to death without allowing him to present his defence or appeal his conviction. Hardy could have chosen to end the novel with Manston providing a ballad or letter before death on the gallows, showing remorse, as was mostly traditional in the ballads in keeping with the moral reflections. However, not all gallows literature was morally edifying. Culler quotes from a letter in which a murderess writes to her parents:

With feelings of the deepest anguish I write to you not that I am sorry for what I have done, far from it. Locked up in my solitary cell, I am rather glad than sorry [...]. Nothing can save me from the scaffold, and I am willing to die.⁴¹

Likewise, in Manston's 'Last Words,' while adopting the convention of gallows literature ostensibly to admit guilt and provide a narrative account of his crime, he also defiantly states:

⁴⁰ Thomas Walter Laqueur, 'Crowds, Carnival and the State in English Executions, 1604-1868' in A. L. Beier et al., ed., *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge: Cambridge University Press, 1989), pp.305-355, pp.317-18

⁴¹ 'Horrid Murder Committed by Mary Wilson' in *Popular Literature in Eighteenth and Nineteenth Century Britain [Microform]: the Robert White Collection of Chapbooks From the University Library, Newcastle Upon Tyne* (Reading: Research Publications) Reel 17

Having found man's life to be a wretchedly conceived scheme, I renounce it, and, to cause no further trouble, I write down the facts connected with my past proceedings (*DR*, p.373).

This reflects the double-sided nature of gallows literature, which could both uphold the authorities and provide an exemplary moral coda and also glorify an unrepentant criminal who not infrequently approached the gallows with defiance. Although Manston is not valorized as an unrepentant criminal, Hardy diminishes his responsibility through the inclusion of his 'Last Words,' in which Manston gives his own account of his crimes. In his letter of confession, Manston provides his own representation in the manner of a first-person broadside narrative account. In the same way that Manston ends his life to deny the state's control over his body his own written statement removes the possibility of the representation of his crime and death being recorded by someone else. This reflected a preoccupation concerning the ritual of execution and representation of crime. As Daniel Defoe writes:

Dying men have been so often injured by the false and imperfect accounts given from those that have pretended to write from their mouths, that such people generally give (what they design to say) in writing to the Sheriff or Officer appointed to attend the execution, and desire it may be made public, leaving copies with some of their relations, in order to be sure that nothing should be added, or omitted, and so no wrong is done them.⁴²

Prior to execution the criminal was finally granted a locus within which to represent him or herself. Manston does not merely exit the world of the novel renouncing life, but Hardy uses the opportunity to give Manston a speech of self-defence and self-representation. Manston's testimony has previously been suppressed as he is silenced from the point of his arrest. The projected execution of Manston is to be private and immediate; fifteen minutes after his arrest it is decided that he is to die and there is no narrative representation of a trial (*DR*, p.369-70). This highlights the controversy over

⁴² Daniel Defoe, *An Essay Upon Literature or an Inquiry into the Antiquity and Original Letters* (London: Thomas Bowles, 1726), p.108, quoted by Lennart J. Davis, in *Factual Fictions: the Origins of the English Novel* (New York; Guildford: Columbia University Press, 1983), p.127

self-defence outlined in Chapter Three and to which Ellen O'Brien refers in a discussion of gallows literature:

The central insight of the last lamentations was that public execution generated a conflict over speech - between the hegemonic condemnatory lesson of the scaffold and the defensive testimony of the condemned criminal. While the accused were forbidden from testifying for their defense during trial, once condemned, they were encouraged by agents of the state to utter publicly last words and confessions.⁴³

In *Desperate Remedies*, the written confession 'Last Words' functions as a gallows speech of defence, in which Manston states that the death of his wife Eunice was the result of an accident rather than murder. In giving Manston a locus for self-representation and self-defence, Hardy drew on the conventions of broadsides, which also highlighted the failure of contemporary trial procedure. The verses attributed to the murderer Rush in the broadside 'The Sorrowful Lamentation and Last Farewell of J.B. Rush,' significantly dwell on his position of defence, providing testimony otherwise suppressed by the prosecutorial system which denied defence counsel to those who could not afford it⁴⁴:

My cause I did defend alone,
For learned counsel I had none;
I pleaded hard and questions gave,
In hopes of my wretched life to save
The witness to confound did try,
But God ordained that I should die.⁴⁵

Manston's 'Last Words' highlights the shortcomings of legal justice and also undermines the conventions of the official function of the broadside confession as he, in effect, defends himself from the worst accusation of murder. Official legal justice is undermined throughout *Desperate Remedies* and the mystery is solved by the amateur detective work of Edward Springrove and Mr Raunham assisted by the heroine Cytherea Graye.

⁴³ O'Brien, "Every Man who is Hanged Leaves a Poem," pp.320-21

⁴⁴ Millgate suggests that Hardy may have been familiar with this broadside. Michael Millgate, *Thomas Hardy: A Biography* (Oxford: Oxford University Press, 1982), p.21

⁴⁵ Henry Mayhew, *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*, vol. 1 (New York: Dover, 1968), p.281

Manston himself fulfils the role of the authorities in his confession, in which he apportions blame entirely to himself and releases Anne Seaway and Miss Aldclyffe from suspicion of complicity (*DR*, p.377). Furthermore he defends himself in his confessional account. Ultimately, the function of his 'Last Words' is to represent Manston's state of mind at the time that his crimes were committed and thus present a posthumous defiant account of self-defence rather than a confession complicit with the state execution. In doing so, Hardy reflected contemporary debates around criminal responsibility in the mid-nineteenth century.

Broadside ballad authors capitalised on the mitigating factor of insanity and concomitant scope for questioning the Law. The defence plea of insanity become legitimate in 1843, but was an argument incorporated into broadside ballads even in Early Modern England, as has been explored in detail by Joy Wiltenberg.⁴⁶ In these early ballads with their strong religious overtones, madness is not a mitigating factor, but is seen as either a precursor to, or retribution for, sin. In nineteenth-century ballads however, representations of madness 'implicitly or explicitly exculpated individuals of moral responsibility while providing contexts which could indict social structures.'⁴⁷ Contemporary legal issues that Hardy raises in *Desperate Remedies* concern the suppression of the criminal's testimony, the arbitrary nature of the appeal system, which was not systematized until 1902 and, notably, appeal on the basis of temporary insanity, which was still an area of great uncertainty.

Psychological mitigating factors in criminal cases were at the forefront of judicial debate in the nineteenth century. Foucault highlights this through studying the controversy surrounding Pierre Rivière's 1835 parricide in Aunay and the competing textual voices available in the dossier account of his murder of his mother, his sister, and his brother.⁴⁸ The dossier included a series of three medical reports which did not reach similar conclusions, court exhibits including statements by witnesses and most notably, a

⁴⁶ Joy Wiltenberg, 'Madness and Society in the Street Ballads of Early Modern England' in *Journal of Popular Culture* 21(4), 1988, pp.101-127

⁴⁷ Ellen O'Brien, "'The Most Beautiful Murder,'" p.20

⁴⁸ Michel Foucault, ed., *I, Pierre Rivière, Having Slaughtered my Mother, my Sister and my Brother...: A Case of Parricide in the Nineteenth Century*, translated by Frank Jellinek, (New York: Pantheon, 1973)

memoir, or rather the fragment of a memoir, written by the accused himself, who had requested to give 'particulars and an explanation' of his crime. Foucault focuses on Rivière's account, which could either indict or exculpate him on the grounds of insanity:

Pierre Rivière, with his innumerable and complicated engines of war; his crime, made to be written and talked about and thereby to secure him glory in death, his narrative, prepared in advance and for the purpose of leading on to the crime, his oral explanations to obtain credence for his madness, his text, written to dispel this lie, to explain, and to summon death, a text in whose beauty some were to see a proof of rationality (and hence grounds for condemning him to death) and others a sign of madness (and hence grounds for shutting him up for life).⁴⁹

The Minister of Justice granted Rivière a reprieve, but with reservations, concluding

I myself feel such grave doubts about the convicted man's mental state that I am wholly unable to conclude either that the sentence should be carried out or that he should be excused from all punishment. In those circumstances I believe it my duty to propose to Your Majesty that the penalty inflicted on Rivière be commuted to one of penal servitude for the term of his natural life without exposure on a public place.⁵⁰

In England, pardon for murder on the grounds of insanity had been a case of royal prerogative until 1837, but with the accession of Queen Victoria, the responsibility was transferred to the Home Secretary.⁵¹ In 1840, an Act was passed allowing the Home Secretary to transfer to an asylum any prisoner who was deemed to be insane in an inquest attended by two justices of the peace and two doctors.⁵² The Act allowed doctors to certify criminal insanity if the prisoner was deemed insane when examined, perhaps long after the criminal act, which, as Nigel Walker suggests, shows that a clear distinction was not drawn regarding insanity at the time of the act and the judgment of the

⁴⁹ *Ibid*, p.xi

⁵⁰ *Ibid*, pp.168-69

⁵¹ Nigel Walker, *Crime and Insanity in England, vol. 1: the Historical Perspective* (Edinburgh: Edinburgh University Press, 1968), p.204

⁵² *Ibid*, p.204

sanity of the accused at the time of interview.⁵³ This situation held until legislation in 1922 allowed medical examiners to investigate the prisoner's mental condition at the time of the interview and at the time of the murder. Until then, the troubled issue of determining the mental state of prisoners, as seen in the case of Pierre Rivière, was experienced in British trials and became the subject of an intense debate in Britain.

Broadside ballad accounts of murder reflected this ambiguity around how to determine criminal insanity. Questions regarding responsibility and criminal intent were raised in the mid-nineteenth century and were reflected in legal discourse. In *Regina v. William Sleep* (1861), C.J. Cockburn states:

The *mens rea* is an essential ingredient in every offence. It is true it may be dispensed with by statute; but the terms which should induce us to infer that it is dispensed with must be very strong.⁵⁴

Thus, the prosecution was obliged to prove *mens rea* (a criminal state of mind) to exist at the time of an offence in order to secure a conviction. First-person narratives capitalized on the legal defence of insanity, showing incipient awareness of relevant concepts and terminology such as premeditation, temporary insanity and crime of passion. For example, the ballad of Richard Bishop, sentenced to death for the murder of his neighbour, reflects and warns against crimes of passion:

I never did intend to kill him,
Why should I my neighbour slay?
He never gave me any reason,
To take his youthful life away?
I was given in charge, as in a passion,
I drew the awful deadly knife
[...]
Let passion you not over come;
I did the deed in the height of passion.⁵⁵

⁵³ *Ibid*, p.208

⁵⁴ E. Chandos Leigh and Lewis W. Cave, *Crown Cases Reserved for Consideration and Decided by the Judges of England (1861-65)* (London: Stevens and Sons, 1866), p.53

⁵⁵ 'Farewell to the World of Richard Bishop, who now lies under sentence of Death in Maidstone Gaol, For the Murder of Alfred Cartwright' in Hindley, ed., *Curiosities of Street Literature*, p.220

Manston's self-representation at the close of the novel mirrors the subversive nature of the first-person narrative account of murder in the execution broadsides as he attests in his 'Last Words' that the death of his wife was accidental. Further lessening his responsibility, in his written confession-suicide note, Manston presents himself with overtones of madness:

I gnashed my teeth in a frenzy of despair...I felt like a madman [...] An indescribable exasperation had sprung up in me as she talked – rage and regret were all in all. Scarcely knowing what I did, I furiously raised my hand and swung it round with my whole force to strike her. [...] The effect staggered me with amazement. [...] It was a long time before I could realize my horrible position (*DR*, pp.373-4).

Manston's account argues that his 'crime' was actually an accident and suggests that his action in striking Eunice was a crime of passion, or perhaps even the result of temporary insanity. However, Manston, like Pierre Rivière, gives a lucid account of his crime and motivation. Thus, on the grounds of the clarity of Manston's written account, it is unlikely that he would have gained a reprieve on the grounds of temporary insanity, as he would have been deemed sane at the time of interview.

Hardy re-raises the unresolved contemporary issue of criminal insanity in *Far from the Madding Crowd* (1874) as an integral issue in the outcome of a case that may end in capital punishment. With the authority to grant a reprieve on the grounds of insanity, it appears that in many cases the Home Secretary erred on the side of caution. Radzinowicz states that 'the effect of the royal prerogative was apparent to everybody. In the 16 years, 1866-1881, 47 per cent. of those convicted were reprieved.'⁵⁶ As noted by Steve McCarty, Hardy uses the characteristics that suggest insanity to explore the contentious Victorian loophole in criminal cases.⁵⁷ The narrative account of the scene in which

⁵⁶ Leon Radzinowicz, *A History of English Criminal Law and Its Administration From 1750*, vol. 5 (London: Stevens & Sons, 1986), p.677

⁵⁷ Steve McCarty, "'That We Can Talk of Another Time': Boldwood's Madness and Victorian Law' in *Thomas Hardy Journal* 21, 2005, pp.94-102

Boldwood shoots Troy suggests that, like Manston's, Boldwood's mental state is temporarily transformed upon Troy's reappearance; the narrator asserts that 'sudden despair had transformed him' (*FMC*, p.378). As Boldwood shoots Troy, his appearance reflects this transition: 'Boldwood's face of gnashing despair had changed. The veins had swollen, and a frenzied look had gleamed in his eye' (*FMC*, p.378). Rosemarie Morgan's study of proof revisions to this scene 'reveal one concern only: to accentuate the focus on Boldwood and to amplify his psychological condition above all else.'⁵⁸ Morgan demonstrates that revisions to the manuscript shift focus from 'Troy's melodramatic death to the harsh psychological reality of Boldwood's manic-obsessive psychosis,' notably with the addition of 'despair' and 'transformation' (*FMC*, p.378), which are not in the manuscript of the novel.⁵⁹ She also notes that during proof revisions for Cornhill, Hardy added the following passage, in which Troy questions Boldwood's sanity⁶⁰:

"Oh, Coggan," said Troy, as if inspired by a recollection,
 "do you know if insanity has ever appeared in Mr
 Boldwood's family?"
 Jan reflected for a moment.
 "I once heard that an uncle of his was queer in the head, but
 I don't know the rights o't," he said.
 "It's of no importance," said Troy lightly (*FMC*, p.252).

Morgan notes that this new segment serves to lend credence to Boldwood's behaviour on the former night when he is baited by Troy into parting with five hundred pounds by way of bribing Troy to marry Fanny. She argues that Troy's self-assured manipulation of his social superior in this scene rests on his assurance that Boldwood is in fact deranged.⁶¹ Morgan's study of the proof revisions serve to show that Hardy developed Boldwood's character to emphasize insanity and the contemporary awareness and uncertainty of the legal status of the insanity plea as a defence at the time of the novel's setting.

⁵⁸ Rosemarie Morgan, *Cancelled Words: Rediscovering Thomas Hardy* (London: Routledge, 1992), p.45

⁵⁹ *Ibid*, p.45

⁶⁰ *Ibid*, p.74

⁶¹ *Ibid*, p.74

Critics place the time setting of *Far from the Madding Crowd* variously between the 1840s and 1869.⁶² Between the 1840s and the Criminal Lunatics Act of 1884, the question of insanity was the focus of considerable legal research and debate.⁶³ In 1843 Daniel McNaughten was sentenced to Broadmoor following his attempt on the life of Sir Robert Peel. On 6th March 1843, *The Times* questioned the outcome of the trial and called for the definition, 'for the edification of common people like ourselves, where sanity ends and madness begins and what are the outward and palpable signs of the one or the other.'⁶⁴ On 19th June 1843, Mc Naughten was acquitted. A debate followed regarding the insanity plea amid calls for changes to the legislature, but Lord Brougham ruled that the law required no change.⁶⁵ A number of judges were questioned in order to codify the law in relation to the insanity plea, and what resulted was known as the 'McNaughten rules.' These rules set out that

To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and gravity of the act he was doing; or if he did know it, that he did not know what he was doing was wrong.⁶⁶

According to the McNaughten rules, insanity exists if the defendant could not appreciate the nature of his actions during the commission of the crime, not before or after. The scope of this definition was questioned in 1874 by Sir James Fitzjames Stephen who argued that the McNaughten rules only considered insanity as affecting understanding and lack of moral sense and did not consider cases in which the emotions and will are

⁶² Ronald Blythe sets *Far from the Madding Crowd* in the 1840s. Cf. *Far from the Madding Crowd* (Harmondsworth: Penguin, 1979), p.24. Hardy's own preface to the novel is unspecific, but locates the time as 'comparatively recent' to its time of writing, which was 1874. Cf. Carl Weber, 'Chronology in Hardy's Novels' in *Publications of the Modern Language Association of America*, 53(1), 1938, pp.314-20, p.314. Weber argues with reference to calendrical evidence in the novel that the action of the novel begins in 1869.

⁶³ Isaac Ray, *A Treatise on the Medical Jurisprudence of Insanity* (London, 1839); L.F. Winslow, *The Plea of Insanity in Criminal Cases* (London, 1840); James Prichard, *The Different Forms of Insanity in Relation to Jurisprudence* (London, 1842); Sir James Fitzjames Stephen, 'On the Policy of Maintaining the Limits at Present Imposed by Law on the Criminal Responsibility of Madmen' in *Papers read to the Juridical Society 1855-58* (London, 1855)

⁶⁴ *The Times*, 6 March 1843, cited by Walker, *Crime and Insanity in England*, vol. 1, p.95

⁶⁵ Walker, *Crime and Insanity in England*, vol. 1, pp.96-97

⁶⁶ Radzinowicz, *A History of English Criminal Law and Its Administration From 1750*, vol. 5, pp.683-4

affected.⁶⁷ Hardy's portrait of Boldwood highlights this deficit in the Law that existed between the 1840s and 1870s.

Hardy's characterization of Boldwood is clearly a more highly-developed portrayal of a disordered mind than Hardy attempted in his depiction of Manston.⁶⁸ While the narrator does not directly or consistently present Manston as insane, in the characterization of Boldwood the suggestion of his insanity is developed and sustained from the beginning of the novel, and in narrative commentary in Chapter Eighteen, it is an integral element of his character:

The phases of Boldwood's life were ordinary enough, but his was not an ordinary nature. That stillness, which struck casual observers more than anything else in his character and habit, and seemed so precisely like the rest of inanition, may have been the perfect balance of enormous antagonistic forces – positives and negatives in fine adjustment. His equilibrium disturbed, he was in extremity at once. If an emotion possessed him at all, it ruled him; a feeling not mastering him was entirely latent. Stagnant or rapid, it was never slow. He was always hit mortally, or he was missed (*FMC*, p.147).

Boldwood suffers under the delusion that Bathsheba will marry him and he signifies the extent to which this affects his reason: "I am beyond myself about this, and am mad" (*FMC*, p.220). Through the outline of Boldwood's character, the narrative suggests that Boldwood's emotions and will are susceptible to the level of turbulence that results in the death of Troy. Justice James Fitzjames Stephen objects to the M'Naughten rules on the grounds that they defined insanity as defective reason and he queries the exclusion of 'the effect of disease upon the emotions and will.'⁶⁹ He reasons that

⁶⁷ Walker, *Crime and Insanity in England*, vol. 1, p.106

⁶⁸ Robert W. Clarke, 'Farmer Boldwood: Shadow of a Magnitude' in *West Virginia University Bulletin Philological Papers*, 17, 1970, pp.45-56, p.46. As Clarke notes, Boldwood, with his Roman features, bears a physical resemblance to Manston, highlighting their affinity as character types. Cf. also Rosemary Sumner, *Thomas Hardy: Psychological Novelist* (London: Macmillan, 1981), p.46

⁶⁹ Sir James Fitzjames Stephen, *A History of the Criminal Law in England*, vol. 2 (London: Routledge/Thoemmes Press, 1996), p.159

a delusion which, considered as a mere mistake, has no importance at all, may as a matter of evidence be of the highest importance, because though trifling in itself it may indicate profound disturbance of every faculty of the mind.⁷⁰

He argues that the presence of delusion on which the McNaughten rules rest may not only be a result of defective reason, but may be evidence of

deep-seated disease affecting a whole man's view of the world in which he lived, falsifying his sense, rendering him inaccessible to reasoning of the simplest kind, and incapacitating him from performing the commonest and most conclusive experiments.⁷¹

Significantly, the Weatherbury community judges Boldwood's insanity partly on the grounds that he neglected his role as a farmer.

It was astonishing, now that a presumption of insanity was raised, how many collateral circumstances were remembered to which a condition of mental disease seemed to afford the only explanation — among others, the unprecedented neglect of his corn stacks in the previous summer (*FMC*, pp.385-6).

However, the more conclusive evidence of his insanity is depicted through the revelation that Boldwood had purchased a number of gifts for Bathsheba and labeled them 'Bathsheba Boldwood' with a date six years in advance. The narrator describes the gifts as 'somewhat pathetic evidences of a mind crazed with care and love' (*FMC*, p.385) again emphasizing the emotional unbalance which affects Boldwood's reason.

Steve McCarty argues that Boldwood's role in the novel was influenced by the high profile contemporary legal cases of McNaughten and George Victor Townley.⁷² The Townley case was particularly controversial and raised a heated public debate and

⁷⁰ *Ibid*, p.161

⁷¹ *Ibid*, p.161

⁷² McCarty, "That We Can Talk of Another Time"

extensive newspaper coverage from 1863 to 1872.⁷³ In 1863, Townley murdered his fiancée after she broke off their engagement. As in Hardy's portrait of Boldwood, Townley's case is reprieved on the grounds of insanity, which is deemed to be hereditary. Townley is sent to Bedlam rather than to the gallows partly because of the hereditary taint 'proved to have existed in the family of the prisoner's grandmother.'⁷⁴ Following his reprieve, Townley committed suicide at Pentonville prison in 1865, and again a comparison can be drawn with Boldwood, who, following his murder of Troy, attempts his own life. Following Sam Samway's intervention, Boldwood leaves the scene stating "There is another way for me to die" (*FMC*, p.379), as he sets out for Casterbridge gaol. There are thus many striking similarities between the case of Townley and Boldwood. Hardy may have been aware of the case through newspaper documentation, but the case also infiltrated broadsides, which gave the working-class perspective on the case and this may have influenced Hardy in the ambivalent presentation of Boldwood in *Far from the Madding Crowd*.

The Townley case raised a sustained attack on the indefinite status of the Law regarding insanity. The plea of insanity was also criticized on the grounds that it was deemed to be a middle-class defence to be argued by counsel by those who could afford it. Baron Martin argued that

a poor person is seldom afflicted with insanity, and it is common to raise a defence of that kind when people of means are charged with the commission of crime.⁷⁵

Defence counsel was out of the financial reach of the working class; as V.A.C. Gatrell writes: 'For most people, ambitious appeals and proceedings in error were out of the question. County clerks of the peace charged £13. 10s. just for three copies of an

⁷³ For example, "The Townley Case," *The Times* 15 Jan. 1864, sec. D: 7; William A. Guy, "The Plea of Insanity," *The Times* 26 Jan. 1872, sec. B: 6

⁷⁴ John C. Waller, "'The Illusion of an Explanation': The Concept of Hereditary Disease, 1770–1870" in *Journal of the History of Medicine and Allied Sciences* 57(4), 2002, pp.410–448, p.412

⁷⁵ Guy, "The Plea of Insanity," *The Times* 26 Jan. 1872, sec. B: 6

indictment.’⁷⁶ Gallows literature passed comment on this class-related issue of the cost of defence counsel and many broadsides highlight the controversy surrounding Townley. Townley came from a respectable upper-middle-class family and it was felt by the public that he escaped the full penalty of the Law because of his wealthy background, social standing and the skill of his defence lawyer. The case was documented in verse in a broadside ballad entitled ‘The Rich and the Poor (or The Gentleman and the Bricklayer)’:

George Victor Townley; we’ll try the well bred first,
(Your advocate in sophism’s exceedingly well versed)
[...]

For doctors skilled in lunacy, whom cunning culprits hail
Examined this poor guilty wretch who lay in Derby gaol;
Quoth one, “A murderous tendency appeareth very plain,
I almost – nay, I’ll certify that Townley is insane;
Remove him to the madhouse and justice will be done”;
But had he been a poor man he’d surely have been hung.⁷⁷

Likewise, the ballad “Lamentation of Samuel Wright” complains that

Some laws are made to suit two classes,
One for the rich, one for the poor;
So it is with me and Townley,
A reprieve they quickly granted he,
He was rich and I was poor,
And I must face the fatal tree.⁷⁸

The narrator of ‘Murder in a Railway Train’ seeks the full measure of the Law to be carried out on the murderer and suggests that there is a chance that an insanity plea will be raised in his defence:

But like Townley, don’t prove that he’s insane

⁷⁶ V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford: Oxford University Press, 1994), p.209

⁷⁷ ‘The Rich and the Poor. Or the Gentleman and the Bricklayer’ in James Hepburn, ed., *A Book of Scattered Leaves: Poetry of Poverty in Broadside Ballads of Nineteenth-Century England* (Lewisburg, PA.: Bucknell University Press, 2000), pp.152-54

⁷⁸ O’Brien, “Every Man who is Hanged Leaves a Poem,” pp.331-32

For if it should be him, on the gallows let him swing.⁷⁹

Far from the Madding Crowd highlights the cost-related issue of defence, emphasizing Boldwood's commercial status in the community as a factor in the commutation of his sentence:

A petition was addressed to the Home Secretary, advancing the circumstances which appeared to justify a request for a reconsideration of the sentence. It was not "numerously signed" by the inhabitants of Casterbridge, as is usual in such cases, for Boldwood had never made many friends over the counter. The shops thought it very natural that a man who, by importing direct from the producer, had daringly set aside the first great principle of provincial existence, namely that God made country villages to supply customers to county towns, should have confused ideas about the Decalogue. The prompters were a few merciful men who had perhaps too feelingly considered the facts latterly unearthed, and the result was that evidence was taken which it was hoped might remove the crime in a moral point of view, out of the category of wilful murder, and lead it to be regarded as a sheer outcome of madness (*FMC*, p.386).

Boldwood is reprieved as a result of an appeal mounted by the community who deem him insane because of his failure in his professional capacity. Although Hardy consistently portrays Boldwood as affected by a delusion indicative of emotional insanity, as allowed by Stephen's definition, as McCarty argues, Hardy's resolution of Boldwood's plot line is ambivalent.⁸⁰ The final commutation is greeted with a note of resounding exultation from a representative voice of the community: "Hurrah!" said Coggan, with a swelling heart. "God's above the devil yet!" (*FMC*, p.387). This, however, is undermined by the narrator who stresses that their suspicions regarding his sanity permeate the community by contagion rather than reason. The narrator reflects that the decision made on the appeal was subjective, 'too feelingly considered,' and not based on codified legal reasoning and precedent. Boldwood's questionable insanity raises issues about testimony

⁷⁹ 'Murder in the Railway Train' in Hindley, ed., *Curiosities of Street Literature*, p.210

⁸⁰ McCarty, "That We Can Talk of Another Time," p.101

as his reprieve is secured through a retrospective evaluation provided by the community after the event and does not attempt to determine Boldwood's state of mind at the time of the act, as required by the McNaughten rules. Hardy's lack of resolution on the matter of Boldwood's insanity reflects the indefinite status of the Law on the question of criminal insanity in the 1840s. As noted, The McNaughten rules did not allow for emotional imbalance, from which Boldwood may suffer, as described by Justice Stephen. Despite Stephen's exposition of their limitations, the McNaughten rules were not amended to reflect Stephen's criticisms until 1953.⁸¹ Hardy's portrait of Boldwood demonstrates this deficit in the Law in the 1840s.

In *Tess of the d'Urbervilles* (1891), Hardy revisits the question of temporary insanity, this time in the portrait of a female character driven to murder; as in the case of Boldwood, murder is as depicted as resulting from an aggravated and sustained attack on Tess's emotions. In broadside ballads, murderesses are often depicted as insane. Ellen O'Brien cites the ballad 'The Esther Tragedy' as questioning the rational awareness of Mary Ann Brough at the time of her murdering her six children. The description of Brough, 'like a demon fierce and wild,' suggests that her deviance from the prescribed social role of nurturing mother to infanticide murderess is likely due to insanity.⁸² In sensation novels, madness was also frequently used to explain aberrant female behaviour and was a mitigating factor in crime. Collins' *The Moonstone* and Braddon's *Aurora Floyd* 'flirt with the possibility of female mania before dismissing it.'⁸³ The narrative of *Tess of the d'Urbervilles* likewise raises the possibility of female insanity through repeated allusion to the hereditary d'Urberville 'aberration' and then refuses to use it as a defence. However, the narrator remains ambivalent regarding Tess's state of mind and the reader cannot ascertain her rationality due to the strategic retreat of the narrator for the description of her murder of Alec d'Urberville. After the murder, Tess tells Angel that she feared long ago, when she struck Alec on the mouth with her glove, that she might murder him to punish him for his actions toward her and Angel (*TD*, p.407). This

⁸¹ Catherine Elliott and Frances Quinn, *Criminal Law*, 6th ed. (Harlow: Longman, 2006), p.325

⁸² 'The Esther Tragedy. Six Children Murdered by their Mother' in Hindley, ed., *Curiosities of Street Literature*, p.199

⁸³ Anthea Trodd, *Domestic Crime in the Victorian Novel* (Basingstoke: Macmillan, 1989), p.40

suggests that the murder was premeditated, but, later Tess claims later that she was 'wickedly mad' to have done it (*TD*, p.413). Angel temporarily questions Tess's sanity and seems to seek this explanation. Following her account on their wedding night of her early experience with Alec and the birth and death of her baby, Angel seeks insanity to mitigate her actions: "Am I to believe this? From your manner I am to take it as true. O you cannot be out of your mind! You ought to be! Yet you are not... My wife, my Tess — nothing in you warrants such a supposition as that?!" to which Tess answers, "I am not out of my mind." (*TD*, p.254). Likewise, on hearing Tess's claim that she has murdered Alec, Angel seeks the alleviating defence of insanity:

As well as his confused and excited ideas could reason, he supposed that in the moment of mad grief of which she spoke, her mind had lost its balance, and plunged her into this abyss (*TD*, p.408).

Tess gives a lucid account, not of the manner in which she murdered Alec, but of her motivation for the murder:

"He has come between us and ruined us, and now he can never do it any more. I never loved him at all, Angel, as I loved you. You know it, don't you? You believe it? [...] Angel, will you forgive me my sin against you, now I have killed him? I thought as I ran along that you would be sure to forgive me now I have done that. It came to me as a shining light that I should get you back that way. I could not bear the loss of you any longer — you don't know how entirely I was unable to bear your not loving me! Say you do now, dear, dear husband; say you do, now I have killed him! [...] He heard me crying about you, and he bitterly taunted me; and called you by a foul name; and then I did it. My heart could not bear it." (*TD*, p.407).

Thus, while the narrative allows that Tess may have suffered temporary insanity, this is quickly undermined by Tess's own 'confession.'

In many broadside ballads, if madness was not a mitigating factor for the murderess, she was depicted as a deviant from the conventional female roles of wife, mother and

daughter. The representation of female criminals was clearly directed toward a male audience reflecting the real contemporary gender bias in trial procedure. In 1851 John Stuart and Harriet Taylor Mill noted that

It is one of the fundamental doctrines of the British Constitution, that all persons should be tried by their peers; yet women, whenever tried, are tried by male judges and a male jury. To foreigners, the law accords the privilege of claiming that half the jury should be composed of themselves: not so to women.⁸⁴

According to Stavreva, the fact that emphasis on murder committed in broadside ballads by women is out of proportion to the actual enactment of the crime is indicative of two ideological strategies: such broadsides ‘made a consistent attempt to criminalize married insubordinate women’⁸⁵ and ‘packaged female crime in readily recognizable forms, at once particular and anonymous.’⁸⁶ Thus ‘cheap print engaged in simultaneously raising and alleviating fears of female unruliness and, what was pretty much the same thing, of female sexuality.’⁸⁷ Of sensation novels, Pykett likewise observes that

The most striking thing about the women writers’ sensation heroine is not her criminality; it is her deviance and transgressiveness. The sensation heroine’s failure to conform to social codes is even more significant, and potentially more subversive, than her breaking of laws.⁸⁸

In broadside accounts, the death of the murderess is not only represented as punishment for the crime, but also, through emphasis on the female body, suggests that she is punished for her sexuality. Sensation novels likewise placed emphasis on the female body to highlight the disjunction between the feminine exterior and the criminal female’s interiority; the female body was subjected to scrutiny to penetrate the mystery of this

⁸⁴ John Stuart Mill & Harriet Taylor Mill, ‘The Enfranchisement of Women’ in John Stuart Mill, *Essays on Equality, Law and Education*, edited by John M. Robson (London: Routledge, 1984), pp.393-415, p.398

⁸⁵ Kirilka Stavreva, ‘Scaffold unto Prints: Executing the Insubordinate Wife in the Ballad Trade in Early Modern England’ in *Journal of Popular Culture* 31(1), 1997, pp.177-88, p.179

⁸⁶ *Ibid*, p.179

⁸⁷ *Ibid*, p.179

⁸⁸ Pykett, *The Sensation Novel*, p.49

anomaly.⁸⁹ However, while the narrator of *Tess* places emphasis on Tess's body, it is not to highlight disparity in Tess's exterior and interior life but to expose the falseness in Angel's construction of her following her 'confession': "You were one person; now you are another" (*TD*, p.255); "the woman I have been loving is not you [but] [a]nother woman in your shape" (*TD*, p.255). The narrator provides a corrective commentary: 'He argued erroneously when he said to himself that her heart was not indexed in the honest freshness of her face' (*TD*, p.261). Unlike the broadside accounts of execution of murderesses, the execution of Tess does not place emphasis on Tess's body but redirects focus toward a panoramic vision of the city of Wintonchester.

Melanie Williams alerts us to the need to consider the 'cultural production of *the crime*'⁹⁰ and through constructing the 'crime' through various legal narrative interpretations, shows the final verdict's dependence on how the defendant's story is legally represented. As argued in Chapter Three, the narrator of *Tess of the d'Urbervilles* adopts the role of defence lawyer in representing her story. Rather than depict Tess as a sexually aberrant murderess punished for her sexuality, Hardy's narrative in defence of Tess represents her as the victim of sexual crime. The emphasis in the narrative is placed not on the murder and execution but on the social and emotional circumstances that led her to murder Alec; the narrator thus maintains sympathy for his heroine as 'more sinned against than sinning' (*TD*, p.258). While the narrative ends with Tess's murder of Alec, the narrator traces the crime to Tess's early experience with Alec, giving an extenuating account of the preface to the murder. In doing so, Hardy may have drawn on the more subversive elements of broadside accounts, some of which provide a mitigating account of the history of the murderess.

While many broadsides depicted murderesses as mad or aberrant and evil, others that portray women as seduced and betrayed rendered them sympathetic and heroic. As Davidson notes, Tess 'is once more the deserted maiden who finally murders her seducer

⁸⁹ Pykett, *The Improper Feminine*, pp.93-99

⁹⁰ Melanie Williams, 'Tess of the d'Urbervilles and the Law of Provocation' in Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.167-190, p.168

with a knife in the effective ballad way.’⁹¹ Kristen Culler’s summary of typical broadside ballad narratives shows that Tess’s story is a version of a ballad theme of murder following seduction:

A few of the ballads stand out because the reasons that the murders were committed. One man is killed by his sweetheart because he would not marry her after he had promised her marriage, seduced her, impregnated her, and then refused to marry her. One woman is killed by her boyfriend after a similar sequence of events. This seems to be a common theme.⁹²

‘Cruel and Inhuman Murder Committed upon the Body of Captain Lawson’ is such an example, telling the story of Lucy Gurd, who, following seduction and breach of promise by Captain Lawson, was subjected to his attempt ‘to commit an outrageous violation of her person,’ upon which she stabs him.⁹³ Emphasis in the broadside account is on the provocation which led to the murder (he ‘boasted thro’ the neighbourhood of the unbecoming manner he had triumphed over her virtue (which left her in a languishing situation these six months past’⁹⁴)) and on the youth of ‘the valiant victress [who] was forced to submit to judicial decorum in the 19th year of her age.’⁹⁵ Hardy wrote ballads with similar plot lines, such as ‘A Trampwoman’s Tragedy,’ in which a murder is committed motivated by sexual jealousy and for which the punishment is execution. This common ballad theme of seduction and murder also forms the plot of *Tess of the d’Urbervilles*, in which Hardy constructs a sympathetic narrative account of Tess’s history.

While broadside confessions frequently relate the protagonist’s experience in a first-person narrative, Tess is represented by a third-person narrator. Tess O’Toole notes that

⁹¹ Donald Davidson, ‘The Traditional Basis of Thomas Hardy’s Fiction’ in Albert J. Guerard ed., *Hardy: A Collection of Critical Essays* (Englewood Cliffs, N.J.: Prentice-Hall, 1963), pp.10-23, p.17

⁹² Kristen F. Culler, ‘The Subgenre of Murder Ballads in the Street Literature of Britain,’ 1999, at <http://mh.cla.umn.edu/culler.html>

⁹³ ‘Cruel and Inhuman Murder Committed upon the Body of Captain Lawson,’ in Hindley, ed., *Curiosities of Street Literature*, b

⁹⁴ *Ibid*, b

⁹⁵ *Ibid*, b

Tess of the d'Urbervilles is 'the novel in which the discomfort attendant upon the experience of 'narrativization' is most strongly emphasized and where, to that end, the family history is supplemented by alternative narratives that also mirror the heroine's experience.'⁹⁶ This narrative representation of alternatives observed by O'Toole is most notable in the conflicting circumstantial accounts regarding Tess's culpability in the two most contentious scenes of the novel, the rape/seduction and the murder of Alec. These accounts are rendered as witness statements in the manner of a trial scene. In support of the argument that the first of these scenes signifies a rape, local rumour of that which led to Tess's pregnancy is represented: "A little more than persuading had to do wi' the coming o't I reckon. There were they that heard a sobbing one night last year in The Chase; and it mid ha' gone hard wi' a certain party if folks had come along" (*TD*, pp.118-19). Rather than providing a clarifying omniscient perspective, the narrator consciously makes the case ambiguous; Tess's words suggest acceptance: "my eyes were dazed by you for a little and that was all" (*TD*, p.105). Notably, in *Tess of the d'Urbervilles*, the narrator is much less omniscient than in Hardy's former novels, frequently choosing not to fully represent scenes in which the reader may wish to assess culpability; he does, however, does provide narrative commentary that contributes to a sympathetic representation of Tess. This sympathetic representation is reflected in the epigraph, a quotation from *Two Gentlemen of Verona*, which, as O'Toole notes continues

"Poor wounded name! My bosom as a bed
Shall lodge thee 'till thy wound be thoroughly heal'd."⁹⁷
(Emphasis added.)

O'Toole notes that this 'implies that the injustice suffered by Tess is an injured reputation, that is to say a story that is unjust or inaccurate because lacking in the compassionate, individuating details.'⁹⁸ Hardy's narrator can be seen as self-consciously take on the role of defence lawyer in the narrative. The novel's full title alerts us to Hardy's concern with representation: *Tess of the d'Urbervilles: A Pure Woman Faithfully*

⁹⁶ Tess O'Toole, *Genealogy and Fiction in Hardy: Family Lineage and Narrative Lines* (Basingstoke: Macmillan, 1997), p.75

⁹⁷ *Ibid*, p.75

⁹⁸ *Ibid*, p.75

In contrast to the speaker of 'Tess's Lament,' in the novel, Tess increasingly rejects external constructions of her and refuses to submit to the constructed role of penitent. There are two confession scenes in *Tess of the d'Urbervilles*; the first is Tess's recounting of her history with Alec and the second her account to Angel of her murder of Alec. Jeanette Shumaker examines *Tess of the d'Urbervilles* as the culminating text in a series of 'confessional novels,' arguing that Hardy rejects the traditional format of the confessional style novel through which the fallen woman is rehabilitated into society:

Tess reverses the conventional moral position of male and female to show that the hierarchies of gender and class that put the man above the woman are wrong. The novel characterizes the "fallen" woman as superior to her confessor, although neither she nor her peers recognize her as such.¹⁰⁰

In *Tess of the d'Urbervilles* Tess does not conform to the role of a conventional penitent, accepting and confessing her wrong-doing, and seeking to atone for her sexuality or for her murder of Alec; her confession does not comply with its conventional role in narratives to 're-establish the violated law.'¹⁰¹

The representation of Tess mirrors the frequently subversive depiction of the murderess that Kalikoff finds in gallows literature:

Although their crimes are described as "horrible and barbarous," the women murderers are powerful, even triumphant, despite the attempts of the legal system to exact shame from them.¹⁰²

Broadsides did not always comply with the official style of confession, and as Stavreva notes, this was particularly in the case of murderous wives.

¹⁰⁰ Jeanette Shumaker, 'Breaking with the Conventions: Victorian Confession Novels and *Tess of the d'Urbervilles*' in *English Literature in Transition* 37(4), 1994, pp.445-62, p.447

¹⁰¹ Dennis A. Foster, *Confession and Complicity in Narrative* (Cambridge: Cambridge University Press, 1987), p.16, quoted by Shumaker in 'Breaking with the Conventions,' p.445

¹⁰² Beth Kalikoff, 'Victorian Sexual Confessions' in *Victorian Institute Journal* 18, 1990, pp.99-112, p.100

Typically, ballads on murderous wives focused on the enactment of the crime and, more often, on the criminal's public repentance and execution. [...]. However, regulating their meaning proved an impossible endeavor. Representations of violent females were far from unambiguously negative. Frequently they were given a strong and appealing voice and heroic spirituality.¹⁰³

The depiction of the female murderess in broadside ballads ran counter to official judgment and exaction of the full legal penalty. The narrator's depiction of Tess's subjective experience in the novel is in defiance of the conventions of the confessional mode. Although Tess's written letters of confession to her mother and to Angel are elided from the text, the letters that she writes to Angel are included, one of which is not written in a penitential mode of typical confession narratives, but rather as a letter of accusation, a counter-confession. Rather than maintain her penitential attitude, she berates Angel for his reaction to her confession.

O why have you treated me so monstrously, Angel! I do not deserve it. I have thought it all over carefully, and I can never, never forgive you! You know that I did not intend to wrong you — why have you so wronged me? You are cruel, cruel indeed! I will try to forget you. It is all injustice I have received at your hands —T (*TD*, p.379).

In contrast to the pattern noted by Shumaker, by which the fallen woman is rehabilitated through the grace of her confessor, Tess is restored to Angel through her defiance in refusing to enact the role of a submissive and contrite penitent. It is Tess's rejection of an external interpretation of her as fallen or impure that leads to her eventual reconciliation with Angel. *Tess of the d'Urbervilles* thus rejects not only the Christian form of confession through which Shumaker argues that the fallen woman can be restored to society, it also rejects the conventional state-controlled broadside confession and draws upon the subversive elements that valorize the murderess.

¹⁰³ Stavreva, 'Scaffold unto Prints: Executing the Insubordinate Wife,' p.179

Hardy's employment of the same subversive narrative strategies as the broadside ballad to elicit sympathy for the murderess constitutes a critique of the ritual of execution with its state-controlled depiction of the criminal narrative. The purpose of the gallows speech or written confession was to make the torture meaningful for the viewing public through letting the audience experience the confession and lesson of the crime. Through the rite of the 'amende honorable,' the criminal confesses and represents his guilt visibly on the body, as documented by Foucault:

It was the task of the guilty man to bear openly his condemnation and the truth of the crime that he had committed. His body, displayed, exhibited in procession, tortured served as the public support of a procedure that had hitherto remained in the shade; in him, on him, the sentence had to be legible for all.¹⁰⁴

O'Brien argues that in *Tess of the d'Urbervilles*, Hardy 'criticises the convention of sacrifice after confession.'¹⁰⁵ Hardy's attack on such a convention reaches its apotheosis in his last novel, *Jude the Obscure*. Jude and Sue, following their separation from their respective marital partners, are socially ostracized for living together unmarried, especially after the children are born. The tragedy of their social isolation culminates in the murder of Sue's children by Jude's son from his previous marriage, 'Father Time.' 'Father Time' leaves a suicide account for his actions: 'Done because we are too menny' (*JO*, p.345), which suggests that he has self-executed as a Schopenhauerian amende honorable for the sin of being born; he has formerly expressed a renunciation of life: "I wish I hadn't been born!" (*JO*, 402). He develops this attitude as a result of a conversation with Sue and the shock of the murder suicide thus results in Sue's crisis of conscience and wish to inflict her own self-retribution:

"It was I who incited him really, though I didn't know I was doing it! I talked to the child as one should only talk to people of mature age. I said the world was against us, that it was better to be out of life than in it at this price; and he took it literally. And I told him I was going to have another

¹⁰⁴ Foucault, *Discipline and Punish*, p.43

¹⁰⁵ Shumaker, 'Breaking with the Conventions,' p.449

child. It upset him. O how bitterly he upbraided me!” (*JO*, p.347).

Following her confession to Jude of this conversation, which gave rise to the tragic events, Sue wishes to make a physical display of retribution, a type of amende honourable:

“[S]elf-abnegation is the higher road. We should mortify the flesh - the terrible flesh - the curse of Adam!”

[...]

“We ought to be continually sacrificing ourselves on the altar of duty! But I have always striven to do what has pleased me. I well deserved the scourging I have got! I wish something would take the evil right out of me, and all my monstrous errors, and all my sinful ways!” (*JO*, p.354).

Sue expresses this in confessional voice characteristic of the broadside ballad, in which the condemned relates the crime and seeks atonement through physical retribution. Sue’s desire for atonement is depicted as the manifestation of a mental breakdown.

The narrator of *Jude the Obscure* presents an alternative reality to that experienced and expressed by the protagonists. This narrative voice mirrors the subversive mitigating voice of the broadside ballad, stressing the poverty and psychological experiences that lead the tragic characters to self-condemnation. In providing an extenuating representation of Jude and Sue’s actions, the narrative account looks outward to indict the limiting social and legal structures to which his characters are psychologically bound. Ellen O’Brien explains how this ‘transgressive continuum shapes the murder ballad aesthetic, for in assigning murder an intricate speech, ballads explicate not simply – never *simply* – barbarous murderers but social and legal structures as well.’¹⁰⁶ She illustrates this with reference to ballad that highlight the social necessity that drives criminals to their desperate actions. O’Brien cites ballads which are strikingly similar to the death scene of the children in *Jude the Obscure*. ‘Shocking Murder of a Wife and Six Children’

¹⁰⁶ O’Brien, “‘The Most Beautiful Murder,’” p.30

relates Walter James Duggin's murder of his family followed by his own suicide. O'Brien notes that

Duggin's act is depicted not as the gory expression of an impassioned killer, but as the pitiful communication of a poor unemployed worker, whose eviction, the broadside notes, was scheduled for twelve o'clock the day the bodies were found. The murders thus become the final, desperate act of poverty: 'Lest they should want, that fatal day,/ His wife and children he did slay.'¹⁰⁷

The ballad of Jeffereys relates the murder of a young boy by his father by hanging.

His little boy named Richard Arthur,
By the wretched father, we are told,
Was cruelly and basely murdered —
The child was only seven years old;
The villain took him to a cellar,
Resolved his offspring to destroy,
Tied his little hands behind him
And hanged the pretty smiling boy.¹⁰⁸

The description of the tragedy follows:

The child was found suspended from a projecting beam or bracket in a cellar [...]. Horrible as it seems, it is apparent from the condition of the body, that the cruel father tied its hands behind, and had literally enacted the part of executioner of his own child, holding its legs, and forcing down its body to complete the strangulation of the poor boy. The child remained in this position till about half-past six o'clock, when it was seen by a girl who had occasion to go to the cellar, and who gave the alarm. Dr Harvey, the parish surgeon, attended directly, and pronounced the child to have been dead about three or four hours [...]. Dr Lankaster, the coroner, held an adjourned inquest on Wednesday and there being no further evidence the jury returned a verdict of

¹⁰⁷ Ellen O'Brien, "'The Most Beautiful Murder,'" p.34

¹⁰⁸ 'Cruel and Inhuman Murder of a little boy, by his father. Committal of the Prisoner' in Hindley ed., *Curiosities of Street Literature*, p.224

wilful murder by hanging and suffocation of Richard A. Jefferey, by his father, John R. Jefferey.¹⁰⁹

The broadside reveals the social causes behind the father's murder of his son, which are similar to those of Jude and Arabella's boy in *Jude the Obscure*, which likewise are documented in a newspaper report, entitled 'Strange suicide of a stone-mason's children' (*JO*, pp.363-64). Richard Jefferey's parents had likewise formed illicit relationships with other partners and subsequently they could not afford the expense of raising the child.¹¹⁰ However, in *Jude the Obscure*, the social indictment has a greater impact as the murder is not carried out by a father, but by a child, who has entirely internalised the social code that the novel critiques. *Jude the Obscure* narrates a prolonged and detailed representation of a class-biased education system, which hampers Jude's academic ambitions and also provides a critique of Victorian morality, all of which contributes to the tragedy of the murder-suicide.

Beth Kalikoff argues that 'if Hardy remembered the gallows literature of his youth, he sequestered that memory beyond the reader's imaginative reach.'¹¹¹ Although he may have not wished to directly evoke the genre of gallows literature, the plots of many of Hardy's novels have strong links with those of broadside ballads. Like broadside accounts of crime, the narratives of Hardy's tragic novels fulfilled a 'double function,' a type of contained subversion, representing lower class grievances while maintaining the status quo. The novelist could draw on the techniques of subversion utilised by the authors of the broadside ballads to depict what Alexander Pettit refers to as the 'sympathetic criminal.'¹¹² The form of the novel, more so than the ballad, allows for the psychological development and sympathetic representation of the criminal character. Hardy thus subverted both the official representation of the criminal as villainous and the symbolic function of execution, which reduces the criminal to a visual display of state power. Pettit argues that appealing criminals in the Victorian novel force the reader 'to

¹⁰⁹ *Ibid*, p.224

¹¹⁰ *Ibid*, p.224

¹¹¹ Kalikoff, 'The Execution of Tess d'Urberville at Wintoncester,' p.116

¹¹² Alexander Pettit, 'Sympathetic Criminality in the mid-Victorian Novel' in *Dickens Studies Annual* 19 1990, pp.281-300

reappraise the relationship between environment and criminal deed in a manner that is compatible with the tenets of juridical reform.’¹¹³ Hardy questioned the unilateral representation of an accused individual’s experience through trial procedure. As O’Brien states, ‘the collective form of the ballad thus offered a resistant cultural and textual space where ballad writers could interrogate specific crimes, judicial proceedings, and punishments.’¹¹⁴ O’Brien demonstrates how the early ‘confession novels’ maintained a conservative and patriarchal control over fallen women, ultimately restoring them to society through encouraging them to make a regenerative confession. Hardy undermined the conventional ‘confession novel’ through showing the failure of confession as a restorative device in the case of Tess and he furthermore shows up the psychological damage inherent in the form of confession through his depiction of Sue’s mental breakdown in *Jude the Obscure*.

Although broadside ballads provided a locus for the self-representation of the criminal, as argued in Chapter Three, Hardy’s tragic heroes most frequently choose not to provide self-defence. While Hardy’s semi-omniscient narratives provide an alternative presentation of the tragic hero’s history, they also highlight the capacity of these tragic protagonists for self-enacted punishment and their ability to internalise external judgment. In the following Chapter I will analyse how Hardy used the tragic hero’s marginalization from legal representation as the deciding factor in their tragic fate. Following the domestic trial scene and their failure to self-represent, Hardy’s tragic heroes renounce life in the disciplinary world. While the ending of *Tess of the d’Urbervilles* is commonly understood as an indictment of the legal system, I argue that the deaths of each of Hardy’s tragic heroes results directly from their position of legal marginalization.

¹¹³ *Ibid*, p.290

¹¹⁴ O’Brien, ““Every Man Every Man who is Hanged Leaves a Poem,”” p.322

THE DEATH OF THE TRAGIC HERO

Throughout his literary career, Hardy attempted to arrive at a definition of tragedy and his various attempts at definition almost always imply the operation of 'Law,' whether it is the literal operation of the Law or a generality which is used to express life, otherwise referred to in his writing as the 'Immanent Will' and 'the inexorable law of Nature.' In 1881, after trying to reconcile a scientific view of life with the emotional and spiritual, Hardy again reflected on the defectiveness of Law and concluded:

The emotions have no place in a world of defect, and it is a cruel injustice that they should have developed in it. "If Law itself had a consciousness, how the aspect of its creatures would terrify it, fill it with remorse."¹

In 1876, the year in which he undertook the writing of *The Return of the Native*, Hardy copied into his notebook an extract from Matthew Arnold's essay 'Heinrich Heine,' which rejects inherited laws and systems:

Modern times find themselves with an immense system of institutions, established facts, accredited dogmas, customs, rules, which have come to them from times not modern. In this system their life has to be carried forward; yet they have a sense that this system is not of their own creation, that it by no means corresponds exactly with the wants of their actual life, that, for them, it is customary, not rational. The awakening of this sense is the awakening of the modern spirit.²

For Hardy, 'Law' was not only a state-controlled codified system of rules regulating social behaviour, but may refer to an inherited and restrictive *nomos* governing society and restraining human potential in both public and private life. In this chapter I argue that the deaths in each of Hardy's tragic novels result from the tragic hero's psychological internalization of legal, or social, discipline. The tragic protagonist experiences his or her

¹ F.E. Hardy, *The Life of Thomas Hardy*, p.153

² Lennart A. Bjork, ed., *The Literary Notebooks of Thomas Hardy*, vol.1 (London: Macmillan, 1985), pp.105-06

life as a form of metaphorical imprisonment, as epitomized by Schopenhauer's metaphorical description, which Hardy recorded twice in his *Literary Notebooks*:³

If you want a safe compass to guide you through life, and to banish all doubt as to the right way of looking at it, you cannot do better than accustom yourself to regard this world as a penitentiary, a sort of a penal colony, or [Greek: ergastæron], as the earliest philosopher called it.⁴

In *Tess of the d'Urbervilles*, the narrator incorporates this philosophy into a narrative commentary on Tess's life experience: 'Like all who have been previsioned by suffering, she could, in the words of M. Sully-Prudhomme, hear a penal sentence in the fiat, "You shall be born"' (*TD*, p.269). Schopenhauer's reflection that we live in a kind of cosmic prison reflects the spirit of the age for which psychological modernity was integrally related to questions of sin and guilt:

There is nothing more certain than the general truth that it is the grievous sin of the world which has produced the grievous suffering of the world [...]. There seems to me no better explanation of our existence than that it is the result of some false step, some sin of which we are paying the penalty.⁵

Although Schopenhauer's concern is with moral, rather than criminal guilt, the symbol of the prison represents a pernicious manipulation of one of the polarities of human consciousness, which he identifies as desire and boredom:⁶

The strict penitentiary system of Philadelphia makes mere boredom an instrument of punishment through loneliness and idleness. It is so terrible an instrument, that it has brought convicts to suicide.⁷

³ Lennart A. Bjork, *The Literary Notebooks of Thomas Hardy*, vol. 2 (London: Macmillan, 1985), 1786, 1979, pp.29, 72

⁴ Arthur Schopenhauer, *Studies in Pessimism: a Series of Essays* (London: Swan Sonnenschein & Co., Ltd., 1908), p.27

⁵ *Ibid*, pp.24-5

⁶ Arthur Schopenhauer, *The World as Will and Representation*, vol. 1, translated by E.F.J. Payne (New York: Dover Publications, 1969), p.313

⁷ *Ibid*, p.313

This chapter will argue that this psychological effect of imprisonment is experienced by Hardy's tragic characters whose emotions shift from desire to ennui, and as a result, they suicide in an act of renunciation of the world.

In his *Study of Thomas Hardy*, D.H. Lawrence uses the extended metaphor of imprisonment as he cautions against individualism within Hardy's nineteenth-century world:

Be passionate, individual, wilful, you will find the security of the convention of a walled prison, you will escape, and you will die, either of your own lack of strength to bear the isolation and exposure, or by direct revenge from the community, or from both.⁸

Lawrence arrives at a definition of Hardy's conditions for tragedy through the use of carceral imagery, finding that the tragic hero is trapped in 'convention of the community [which] is a prison, to his natural, individual desire.'⁹ Lawrence notes the sense of metaphorical imprisonment in Hardy's tragic novels; a 'little fold of law and order' realised in visible imagery, a 'walled city,' becomes too small for the tragic hero who then must 'die (confined) in the bonds of that code, free and yet unfree, preaching the walled city and looking to the waste.'¹⁰ Lawrence's analysis is suggestive of the significance of the backdrop of Hardy's tragic novels:

In Hardy and Tolstoy the lesser human morality, the mechanical system is actively transgressed, and holds, and punishes the protagonist, whilst the greater morality is only passively, negatively transgressed, it is represented merely as being present in background, in scenery, not taking any active part, having no direct connexion with the protagonist.¹¹

⁸ D.H. Lawrence, *Study of Thomas Hardy and Other Essays*, edited by Bruce Steele (Cambridge: Cambridge University Press, 1985), p.21

⁹ *Ibid*, p.21

¹⁰ *Ibid*, p.29

¹¹ *Ibid*, p.29

While the scenery that would reflect the greater human morality is present as a backdrop that has no active part, the mechanical system of the Law is represented through landscape imagery. Both gallows and prison feature in Hardy's landscapes as representative of the 'mechanical system' of the Law. Michael Squires defines pastoral as an urban middle class retreat from a complex urban landscape to a simpler rural idyllic setting.¹² The addition of carceral imagery to Hardy's rural landscapes is coupled with his shift in narrative mode from pastoral to tragic. Lawrence's analysis points to the tragic individual's metaphorical experience of their environment as a place of criminal punishment. I contend that it is the tragic protagonist's imaginative engagement with the world as a site of criminal punishment that leads to the culminating death scene in each of Hardy's tragic novels.

In *Imagining the Penitentiary: English Law Courts and the Novel* (1987), John Bender argues that the novel itself functions mirrors the architectural model of the prison mirrors the imaginative space of the novel, as both are cultural systems designed to construct and shape character according to 'controlled principles.'¹³ Bender draws on Foucault's *Discipline and Punish: the Birth of the Prison* to show that the realist narrative is preoccupied with surveillance and control.¹⁴ He argues that in the realist mode 'narration invisibly controls, contains, and becomes authoritative,'¹⁵ along the lines of Jeremy Bentham's Panopticon watchtower observer. In *The Novel and the Police*, D.A. Miller further analyses the role of surveillance in literature as a means of enacting social control.¹⁶ In a study of Hardy's *The Woodlanders* Cates Baldridge's draws on Foucault to emphasize the role of 'optics – both moral and manufactured – whose very composition relentlessly transforms acts of seeing into projections of power.'¹⁷ Sara Malton also demonstrates how social control is maintained and perpetuated through both surveillance

¹² Michael Squires, *The Pastoral Novel: Studies in George Eliot, Thomas Hardy, and D. H. Lawrence* (Charlottesville: University Press of Virginia, 1974), pp.1-10

¹³ Bender, *Imagining the Penitentiary*, p.35

¹⁴ Michel Foucault, *Discipline and Punish: the Birth of the Prison* (Harmondsworth: Penguin, 1979)

¹⁵ *Ibid*, p.213

¹⁶ D.A. Miller, *The Novel and the Police* (Berkeley and Los Angeles: University of California Press, 1983)

¹⁷ Cates Baldridge, 'Observation and Domination in Hardy's *The Woodlanders*' in John Maynard and Adrienne Auslander Munich, ed., *Victorian Literature and Culture* 21, (New York: AMS Press, 1993), pp.191-209, p.208

and community judgment in *The Return of the Native*.¹⁸ These Foucauldian studies depict imprisonment as a theme in these two tragic novels. I will argue that the theme of life as a penitentiary is also, as implied by Lawrence's reading, depicted imagistically in Hardy's tragic novels. The image of the prison encapsulates the tragic hero's experience of a social and moral disciplinary pressure, which was disseminated throughout society through the kind of pervasive social discipline that Sara Malton identifies in *The Return of the Native*.¹⁹ Malton argues that Eustacia's death shifts focus outwards and that 'through his focus on the construction and subsequent demise of Eustacia's identity, Hardy exposes and condemns the destructive power of restrictive "disciplinary mechanisms."' ²⁰ I argue in the present chapter that this pattern is pervasive and that the deaths in each of Hardy's tragic novels result directly from this experience of the world as a site of criminal punishment. I contend that suicides are suggested in Hardy's novels (albeit ambiguously) as a rebellion against discipline (Eustacia, Tess, Jude) or acceptance and internalisation of discipline (Boldwood, Clym, Henchard, Sue).

When in 1912, Hardy wrote a General Preface for the Wessex edition of his novels he categorized them according to broad generic patterns. He categorised his tragic novels as 'Novels of Character and Environment,'²¹ which he believed 'approach most nearly to uninfluenced works.'²² This category reveals a striking pattern: with the exception of *Under the Greenwood Tree* these novels feature a landscape imbued with the imagery of criminal punishment.²³ The title of this category suggests that characterization is intricately related to environment and that Hardy develops his tragic characters through depicting their response to their environment as a form of imprisonment or physical punishment.

¹⁸ Sara A. Malton, "'The Woman Shall Bear Her Iniquity': Death as Social Discipline in Thomas Hardy's *The Return of the Native*" in *Studies in the Novel* 32(2), 2000, pp.147-64

¹⁹ Malton, "'The Woman Shall Bear her Iniquity'"

²⁰ *Ibid*, p.162

²¹ Thomas Hardy, 'The General Preface to the Wessex Edition' in Harold Orel, ed., *Thomas Hardy's Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.44-50, p.44

²² *Ibid*, p.44

²³ In Hardy's General Preface to the Wessex Novels (1912), his category of 'Novels of Character and Environment' encompasses: *Tess of the d'Urbervilles*, *Far from the Madding Crowd*, *Jude the Obscure*, *The Return of the Native*, *The Mayor of Casterbridge*, *The Woodlanders*, *Under the Greenwood Tree*, *Life's Little Ironies* and a few Crusted Characters and Wessex Tales.

Hardy included *Far from the Madding Crowd* (1874) in his 'Novels of Character and Environment.' Although formally a pastoral novel, ending with the marriage of Gabriel Oak to Bathsheba, the landscape of *Far from the Madding Crowd*, like that of the tragic novels, is imbued with imagery pertaining to capital punishment. The gallows is a real figure in the text and a potential source of a tragic ending. Following his murder of Troy, Boldwood repairs to Casterbridge gaol to give himself up to the authorities. The 'happy ending' that Hardy saw as a false resolution²⁴ is notably allowed on the level of plot in *Far from the Madding Crowd*, as Boldwood is judged to be insane and thus his sentence is reduced from the death sentence to imprisonment at Her Majesty's pleasure. Subsequently, the novel concludes with Bathsheba's marriage to Gabriel Oak. Thus, through Hardy following the pastoral rather than the tragic mode, Boldwood ultimately avoids the gallows, which is a suggested, disruptive narrative image rather than an object for a sustained discussion. Although off-stage, the gallows yet features as a significant though shadowy backdrop to the action and has a huge psychological impact on all characters involved in the rural drama. In a scene that prefigures the ending of *Tess of the d'Urbervilles* (1891), the prison and gallows dominate the landscape, even when seen from a distance:

Gabriel came from Casterbridge Gaol, whither he had been to wish Boldwood good-bye and turned down a by-street to avoid the town. When past the last house he heard a hammering, and lifting his bowed head he looked back for a moment. Over the chimneys he could see the upper part of the gaol entrance, rich and glowing in the afternoon sun, and some moving figures were there. They were carpenters lifting a post into a vertical position within the parapet. He withdrew his eyes quickly and hastened on (*FMC*, p.386).

²⁴ In an interview with Raymond Blathwayt, Hardy stated: 'the optimistic "living happy ever after" always raises in me a greater horror by its ghastly unreality than the honest sadness that comes of a logical and inevitable tragedy.' Raymond Blathwayt, 'A Chat with the Author of *Tess*', in Laurence Lerner and John Holmstrom ed., *Thomas Hardy and his Readers: a Selection of Contemporary Reviews* (London, Bodley Head Ltd, 1968), pp.90-97, p.92. In a letter to J.A. Symonds, Hardy wrote 'I often begin a story with the intention of making it brighter and gayer than usual; but the question of conscience soon comes in, & it does not seem right, even in novels, to wilfully belie one's own views.' Richard Little Purdy and Michael Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 1 1840-1892 (Oxford: Clarendon Press, 1978), p.190

A significant contrast is evident here between the mindsets of Gabriel and Boldwood. Gabriel turns away from the gaol-house and the construction of the gallows. Boldwood however has sought out the gallows, determined to self-punish. The resolution of the Boldwood story line occurs 'off stage' and thus the reader is not brought into his consciousness from the time of the murder of Sergeant Troy to the time of his exit from the novel, to fulfil his punishment of life imprisonment. Hardy's interest in the psychology of self-punishment is thus kept at the periphery of the novel. That *Far from the Madding Crowd* remains in the pastoral mode is allowed by Hardy's muted use of gallows and prison imagery, which is not permitted to dominate or be seen as representative of life. Death is judged to be worse than imprisonment on a literal level in *Far from the Madding Crowd*, whereas later in Hardy's tragic novels, death is chosen over a life that is experienced as a 'life sentence.'

The experience of life as imprisonment, which is developed in the tragic novels, is suggested in *Far from the Madding Crowd*, but is only a temporary experience in this pastoral novel. One of Hardy's early definitions of tragedy was developed from his watching the crowds of London and viewing the women as 'caged birds.'²⁵ In the opening chapter of *Far from the Madding Crowd*, Bathsheba's arrival is accompanied by a caged canary: 'The handsome girl waited for some time idly in her place, and the only sound heard in the stillness was the hopping of the canary up and down the perches of its prison' (*FMC*, p.43). Bathsheba, who is associated with the 'caged canary,' imprisons herself in the attic of her house, but imprisonment in *Far from the Madding Crowd* does not represent a permanent experience of existence. Bathsheba is restored to the pastoral tradition when, after the revelation that her servant Fanny died carrying Troy's child, she flees to a thicket and immerses herself in foliage and awakens to birdsong. As will be argued, the contrast between free birds and the experience of human life later becomes a trope in Hardy's tragic novels.

²⁵ F.E. Hardy, *The Life of Thomas Hardy*, p.178

The Return of the Native (1878) marked a significant development in Hardy's narrative art, as he committed himself to the tragic mode. This transition can be seen in the description of landscape and the interrelationship between character and environment. The opening chapter of *The Return of the Native* has received much critical commentary, with the lengthy description of Egdon Heath leading critics to consider the heath 'the chief character of the novel.'²⁶ As noted by Desmond Hawkins, Hardy's description of Egdon Heath in the opening chapter of *The Return of the Native* was influenced by John Hutchins' *History and Antiquities of the County of Dorset*, (1861-73), which describes the Dorset heathland:²⁷

This is professedly the most barren part of the county; and Nature, who has in other parts distributed her beauties with so liberal a hand, seems here, by way of contrast, to exhibit a view of all others the most dreary and unpleasing.²⁸

Hutchins' *History* was a topographical study, appealing to contemporary antiquarian interest in the region. In creating Egdon Heath, Hardy sought to evoke a locale that reflected a contemporary response, 'a more recently learned emotion,' (*RN*, p.34) than traditional responses to landscape. Hardy's description of Egdon Heath resembles Hutchins' description, but his depiction of the region by contrast de-specifies aspects of regional interest, such as the spatial extent of the heath. Furthermore, Hardy makes a notable addition to his source text. Urban imagery of the prison is employed as an analogy of the sublime nature of the heath:

Twilight combined with the scenery of Egdon Heath to evolve a thing majestic without severity, impressive without showiness, emphatic in its admonitions, grand in its simplicity. The qualifications which frequently invest the façade of a prison with far more dignity than is found in the façade of a palace double its size lent to this heath a

²⁶ Ian Gregor, *The Great Web: the Form of Hardy's Major Fiction* (London: Faber, 1974), p.81

²⁷ Desmond Hawkins, 'Hardy's Wessex' in Sir Angus Wilson, ed., *Essays by Divers Hands: Being the Transactions of the Royal Society of Literature*, vol. 43 (Woodbridge: Boydell Press for the Royal Society of Literature, 1984), pp.75-89, p.80

²⁸ John Hutchins, *The History and Antiquities of the County of Dorset*, vol. 1, 3rd ed., edited by W. Shipp and J.W. Hodson (Wakefield: EP Publishing, 1973), p.lxvi

sublimity in which spots renowned for beauty of the accepted kind are utterly wanting. Fair prospects wed happily with fair times; but alas, if times be not fair! Men have oftener suffered from the mockery of a place too smiling for their reason than from the oppression of surroundings oversadly tinged. Haggard Egdon appealed to a subtler and scarcer instinct, to a more recently learned emotion that that which responds to the sort of beauty called charming and fair (*RN*, p.34).

Hardy indicates that while nature and the heath remain the same, modern consciousness has changed to reflect the birth of the prison in the Victorian landscape and consciousness. The image of the prison in this passage is depicted as emblematic of the modern life experience, as suggested by Schopenhauer.

The Return of the Native is representative of Hardy's shift from the pastoral to the tragic mode. This generic shift is signalled by an encroachment of urban prison imagery onto an untouched pastoral landscape. As J.T. Boulton states,

the opening chapter of *The Return of the Native* is in effect, Hardy's disquisition on the beautiful and the sublime in landscape and marks the rejection of his former traditional pastoral representation of landscape as inappropriate for the representation of the modern psyche.²⁹

There is a division in *The Return of the Native* between tragic and pastoral characters, to allow for the novel to end in the marriage of Thomasin and Venn. Characterisation is developed according to psychological responses to the landscape. The central tension in the novel between Clym and Eustacia is represented by their conflicting attitudes to their surroundings:

Take all the varying hates felt by Eustacia towards the heath, and translate them into loves, and you have the heart

²⁹ Burke, Edmund, *A Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful* edited by James T. Boulton (London: Routledge and Kegan Paul, 1958), p.cxx

of Clym. He gazed upon the wide prospect as he walked,
and he was glad (*RN*, p.191).

Eustacia and Wildeve's responses to the heath are set in an explicit contrast with those of Clym and Thomasin, whose journey across the heath on the night of Eustacia's death is described in contrast to that of Eustacia:

To her there were not, as to Eustacia, demons in the air, and malice in every bush and bough. The drops which lashed her face were not scorpions, but prosy rain; Egdon in the mass was no monster whatsoever, but impersonal open ground. Her fears of the place were rational, her dislikes of its worst moods reasonable (*RN*, p.365).

Thomasin observes to Wildeve that he looks at the heath as if it were 'somebody's gaol instead of a nice wild place to walk in,' while she admires 'its grim old face,' (*RN*, p.351). Eustacia, like Wildeve, experiences the heath as a jail (*RN*, p.114); and 'felt like one banished; but there she was forced to abide' (*RN*, p.91). The psychological response that corresponds with the tragic vision is the hero or heroine's perception of the heath (as a microcosm of the world) as a prison.

The depiction of Eustacia, it must be observed, is often ironic but yet it is significant that she is presented in terms that align her with the discourse of disciplinary power. *The Return of the Native* is imbued with allusions to classical stories, Prometheus, Tantalus and Atlas, which exemplify punishment imposed by 'the gods.' There are also numerous references to modern characters who, rather than simply representing subjection to power, actually wield power; Eustacia's 'high gods' are famous battle leaders, 'William the Conqueror, Strafford, and Napoleon Buonaparte' (*RN*, p.92). When revising the novel's manuscript for book publication, Hardy changed Eustacia's surname from Drew to 'Vye.'³⁰ The significance of her surname is signalled by Mrs Yeobright, who notes that it is not Eustacia's natural surname, but that of her grandfather, which she has adopted as her own (*RN*, p.218). The amended surname is appropriately homophonic with 'vie' as

³⁰ Simon Gatrell, ed., *The Return of the Native: a Facsimile of the Manuscript with Related Materials* (London: Garland, 1986), pp.418-19

Eustacia, 'Queen of Night,' vies for a power of regal and social magnitude as represented by her assuming the mummer's dress of the Turkish Knight. This adoption of traditionally male clothing assimilates her gender frustration with a wish to have monarchical power over life and death. Hardy's narrator posits a world in which Eustacia wields such power:

Had it been possible for the earth and mankind to be entirely in her grasp for a while, had she handled the distaff, the spindle, and the shears at her own free will, few in the world would have noticed the change of government (*RN*, p.89).

Hardy invests Eustacia with classical allusion to the three Fates, the Moirae of Greek mythology, who were personifications of destiny and held the ultimate power over the life and death of men. Although Eustacia is presented in the ironic mode in the 'Queen of Night' chapter, her aspirations toward living in Paris are presented with seriousness; she seeks to be associated with palaces, asking Clym to tell her of the palaces in Paris: the Tuileries, the Louvre and Versailles (*RN*, p.213).

Eustacia is presented alternately as queen and victim, from her characterization as 'Queen of Night' to her death on the heath. An elided sentence from the manuscript version of the novel highlights this queen/victim trope: 'She differed from Demeter's daughter as a queenly bondswoman differs from a bonded queen.'³¹ In terms of Foucauldian power relations, she thus alternately represents monarchical power and the body of the criminal subjected to that power. When Eustacia states, "The heath is a cruel taskmaster to me" (*RN*. p.203), she relates her mental experience in terms of physical subjection, as she does on the night of her death:

It was a night which led the traveller's thoughts instinctively to dwell on nocturnal scenes of disaster in the chronicles of the world, on all that is terrible and dark in history and legend — the last plague of Egypt, the

³¹ *Ibid*, p.92

destruction of Sennacherib's host, the agony in Gethsemane (*RN*, p.356).

Eustacia's perception of the heath as inimical to her is sustained throughout the narrative and integrated with her death at the close of the novel. Other characters in the novel, and the narrator, present her experience externally as imprisonment and a form of power struggle. Wildev's surveillance of Eustacia's house is narrated with composite allusions to lost battles and imprisonment. Through such allusions, Eustacia's death on the heath is depicted as a loss or capitulation. Eustacia is aware of her own limitations, claiming that she is 'too ready to believe in [her] own power' (*RN*, p.106); on the night of her death, the narrator comments:

To have lost is less disturbing than to wonder if we may possibly have won; and Eustacia could now, like other people at such a stage, take a standing-point outside herself, observe herself as a disinterested spectator, and think what a sport for Heaven this woman Eustacia was (*RN*, p.343).

As with the allusion in *The Mayor of Casterbridge* to Henchard's Austerlitz (*MC*, p.155) Hardy uses allusion to a battle at which the fortune of a leader changed to reflect the loss of Eustacia's power struggle. As Wildev surveys Eustacia's house, he does so with the tourist's interest in the Chateau of Hougomont, where Wellington's army took the first impact of the French attack in the battle of Waterloo, or as the prison of Mary Stuart (*RN*, p.287). The allusion to Mary Queen of Scots is suggestive of Eustacia's imprisonment merely being a preface to corporal punishment, which, the narrative suggests, she eventually carries out on her own body through suicide.

Eustacia's death is not directly narrated, leaving ambiguity as to whether or not it is suicide, but as Giordano argues, reading Eustacia's death as suicide is consistent with her characterization³² and furthermore, suicide is prefigured with proleptic allusions throughout the text (*RN*, pp. 267, 331, 334, 339). Of the scene in which Eustacia's dead body is viewed, Giordano suggests that

³² Frank R. Giordano, Jr., "I'd Have My Life Unbe": *Thomas Hardy's Self-Destructive Characters* (Alabama: University of Alabama Press, 1984), p.57

The Paterian flourish and the classical serenity of this final view of Eustacia recall entries from the 'Ethics of Suicide' essay (*LN*, p.49) in which Seneca's advocacy of suicide as a 'refuge to the oppressed & suffering' follows Marcus Aurelius's idea that it may be man's duty to commit suicide as a means of escaping moral deterioration.³³

There is no textual evidence however, to suggest that Eustacia equivocates over eloping with Wildeve on moral grounds; she finally chooses not to accompany him because he is "not *great* enough" (*RN*, p.357). Nor does she internalise a sense of guilt over her relationship with Wildeve or the death of Mrs Yeobright. Rather, Eustacia rejects such feelings in her last soliloquy:

"O the cruelty of putting me into this ill-conceived world! I was capable of much; but I have been injured and blighted and crushed by things beyond my control! O, how hard it is of Heaven to devise such tortures for me, who have done no harm to Heaven at all!" (*RN*, p.357).

Eustacia's experience of life as imprisonment is expressed through language pertaining to physical punishment. Lacking the power she seeks, and experiencing life as imprisonment, Eustacia ultimately re-establishes power over her body through taking her own life. Malton notes the irony in Eustacia's simultaneous rejection of disciplinary power and adoption of punishment through self-inflicting death and rendering herself a spectacle in death as a symbol of social discipline.³⁴ Through Eustacia's suicide, and the sense of loss of the tragic heroine, Hardy seeks to expose the psychological damage of community discipline, by which society purges itself of transgressors.

Sara Malton assesses guilt and punishment in *The Return of the Native* as deriving from a breach of a moral rather than a criminal code. In *The Mayor of Casterbridge* the transition from external criticism to self-inflicted punishment is likewise centred around an action that is considered morally reprehensible rather than criminal, Michael

³³ *Ibid*, p.76

³⁴ Malton, "The Woman Shall Bear her Iniquity," pp.162-3

Henchard's sale of his wife. The plot follows a structural pattern of reversal of fortune centred around the exposition of the wife sale and the internalisation of moral, and also criminal, guilt. Throughout the novel, Henchard undergoes a process of internalisation of guilt, which brings him eventually to the point of suicide as self-punishment, a transition that is related through the depiction of landscape and Henchard's choice of physical surroundings.

Following the sale of his wife at Weydon-Priors fair, Henchard visits a Church and makes an oath at the sacrarium with his head on the Bible on the Communion-table 'where he seemed to feel a sense of the strangeness for a moment' (*MC*, p.50). It is only after this momentary desire for reconciliation with an indefinite higher authority, that Henchard seeks the concrete environment of punishment. Following the sale of his wife and daughter and failed attempt to find them, Henchard adopts the role of criminal and with dogged determination seeks out the appropriate setting for his character:

Then he said he would search no longer, and that he would go and settle in the district which he had had for some time in his mind. Next day he started, journeying south-westward, and did not pause, except for nights' lodgings, till he reached the town of Casterbridge, in a far distant part of Wessex (*MC*, p.51).

Casterbridge is not only a successful agricultural town, but also an assize town imbued with legal imagery, which encroaches on the pastoral setting:

Casterbridge, as has been hinted, was a place deposited in the block upon a corn-field. [...] The farmer's boy could sit under his barley-mow and pitch a stone into the office-window of the town-clerk; reapers at work among the sheaves nodded to acquaintances standing on the pavement-corner; the red-robed judge, when he condemned a sheep-stealer, pronounced sentence to the tune of Baa, that floated in at the window from the remainder of the flock browsing hard by; and at executions the waiting crowd stood in a meadow immediately before the drop, out of which the cows had been temporarily driven to give the spectators room (*MC*, p.116)

Casterbridge is a scarcely altered, fictionalised version of Dorchester and is likewise an assize town with court, gallows and prison. The landscape lends itself to the internalisation of guilt to a greater extent than does that of *The Return of the Native*. Henchard experiences a moment of self-discovery in the novel, which marks a transition to an internalised sense of guilt. After he reads Susan's letter, which reveals Newson's paternity of Elizabeth-Jane, Henchard experiences a moment of anagnorisis, which shows a casting off of superstition and acceptance that he deserved punishment:

His usual habit was not to consider whether destiny were hard upon him or not – the shape of his ideas in cases of affliction being simply a moody “I am to suffer I perceive.” “This much scourging then, is it for me?” But now through his passionate head there stormed this thought – that the blasting discourse was what he had deserved (*MC*, p.146).

This psychological experience is depicted physically. Following this moment of recognition, he immediately repairs to Casterbridge gaol and gallows. Notably, the location of the gallows on the north-eastern side of Casterbridge is described in terms of the psychological and physical pain it evokes:

These precincts embodied the mournful phases of Casterbridge life, as the south avenues embodied in its cheerful moods. The whole way along here was sunless, even in summer time; in spring, white frosts lingered here when other places were steaming with warmth; while in winter it was the seed-field of all aches, rheumatisms, and torturing cramps of the year (*MC*, p.147).

Rather than psychologically engaging with Casterbridge gaol, Henchard focuses on the gallows and the missing figure that would make it complete:

Above the cliff, and behind the river, rose a pile of buildings, and in front of the pile a square mass cut into the sky. It was like a pedestal lacking its statue. This missing feature, without which the design remained incomplete, was, in truth, the corpse of a man; for the square mass

formed the base of the gallows, the extensive buildings at the back being the county gaol. In the meadow where Henchard now walked the mob were wont to gather whenever an execution took place, and there to the tune of the roaring weir they stood and watched the spectacle (*MC*, pp.147-48).

The next paragraph marks a shift from this external description of the outside physical environment to the internalised psychological effect on Henchard. Like Eustacia, whose psychological interior is 'in perfect harmony with the chaos without,' (*RN*, p.356) the scene matches Henchard's mood. Unlike Eustacia, Henchard is aware of this consonance and in fact seems to revel in it, rather than fight it.

The exaggeration which darkness imparted to the glooms of this region impressed Henchard more than he had expected. The lugubrious harmony of the spot with his domestic situation was too perfect for him, impatient of effects, scenes and adumbrations. It reduced his heartburning to melancholy, and he exclaimed, "Why the deuce did I come here!" He went on past the cottage in which the old local hangman had lived and died, in times before that calling was monopolised over all England by a single gentleman; and climbed up by a steep back lane into the town (*MC*, p.148).

During the years in which the action of *The Mayor of Casterbridge* takes place, the old and modern methods of criminal punishment, gallows and prison, co-existed. Hardy presents the transition from the physical spectacle of the gallows to the psychological punishment enforced by imprisonment as an almost instantaneous process that renders Henchard alienated and anachronistic in an unfamiliar disciplinary environment. Although Henchard is a magistrate and has been situated in a town that features a courtroom and a prison, he chooses to self-inflict physical punishment and seeks out the cottage of the hangman. This choice is prefigured in the scene following the skimmington-riding. This scene functions as a metaphorical execution and notably, the character who reads it as such is Henchard who sees the vision of the effigies as a representation of execution of which he should equally have been victim. As Elizabeth-Jane explains the presence of the effigies Henchard replies: "Ah – to be sure – the image

o' me! But where is the other? Why that one only? ... That performance of theirs killed her, but kept me alive" (*MC*, p.301). At this point, the idea of suicide becomes indelibly associated with the effigies in Henchard's mind. The effigies are found the following day and 'as little as possible was said of the matter, and the figures were privately destroyed' (*MC*, p.302). Henchard's subsequent suicide is, like the destruction of the effigies, not a spectacle, but a private experience of execution by suicide. However, even in his private self-imposed exile, Henchard leaves Casterbridge still acting out performative ideas of criminality; in a theatrical moment of soliloquy he declaims, "I — Cain — go alone as I deserve — an outcast and a vagabond. But my punishment is not greater than I can bear" (*MC*, p.314). It is no coincidence that Henchard leaves Casterbridge 'by a forking highway which skirted the north of Egdon Heath' (*MC*, p.329), the tract of land indelibly associated for Hardy, with execution.³⁵

In *The Mayor of Casterbridge* Hardy employed bird imagery to express a character's psychological imprisonment. As Henchard leaves Casterbridge in self-exile, his parting gesture is a wedding gift to Elizabeth-Jane and Farfrae of a caged canary. This gift is emblematic of Henchard's internalization of guilt and experience of the world as a prison. *Tess of the d'Urbervilles* marks another transition in the development of Hardy's tragic novel and its relationship with the Law as Hardy sets up an explicit contrast between Law and Nature. Hardy again draws on bird imagery and landscape to explore and denounce the retributive nature of the Law and its dissonance with Nature. Although Tess recalls a time when "the sight of a bird in a cage used often to make [her] cry," (*TD*, p.413) bird imagery in the novel is more often associated with physical torture. This use of bird imagery functions as an extended metaphor depicting Tess's permanent experience of life from the beginning of the novel, when she is 'caught during her days of immaturity like a bird in a springe' (*TD*, p.224). Such references accumulate toward the end of the novel. As Tess journeys to Flintcomb-Ash, she encounters the man whom she recognizes as a friend of Alec and escapes from him into a plantation, where she sees hunted birds falling from the trees. She identifies with the plight of the birds and 'with the impulse of a soul who could feel for kindred sufferers as much as for herself, Tess's first thought was to

³⁵ Cf. Introduction, p.14

put the still living birds out of their torture' (*TD*, p.302). The narrator builds an analogy between Tess and the hunted birds in her seeking the plantation as refuge: 'there seemed only one escape for her hunted soul' (*TD*, p.301) and she builds a nest for herself in the foliage. While in a similar scene in *Far from the Madding Crowd* Bathsheba's inner experience is not represented, (*FMC*, p.311), in *Tess of the d'Urbervilles*, the narrator dwells on Tess's thoughts, which reflect her psychological experience of the world as a site of physical torture. Notably Tess modifies the Biblical quotation, 'Vanity of vanities, all is vanity' (Ecc 1:2) adding imagery pertaining to physical torture and death:

Was there another such a wretched being as she in the world? Tess asked herself; and, thinking of her wasted life, said, "All is vanity." She repeated the words mechanically, till she reflected that this was a most inadequate thought for modern days. Solomon had thought as far as that more than two thousand years ago; she herself, though not in the van of thinkers, had got much further. If all were only vanity, who would mind it? All was, alas, worse than vanity — injustice, punishment, exaction, death. The wife of Angel Clare put her hand to her brow, and felt its curve, and the edges of her eye-sockets perceptible under the soft skin, and thought as she did so that a time would come when that bone would be bare. "I wish it were now," she said (*TD*, p.301).

Tess's preoccupation with 'injustice, punishment, exaction, death,' is indicative of her experiencing life not as imprisonment but as physical pain. Tess's adaptation of the biblical allusion to Solomon also mirrors Foucault's distinction between the Christian soul, born out of sin, and this modern form of the soul, born out of disciplinary technologies. Narrative references to Tess's soul are overshadowed with language pertaining to physical torture; when Tess describes how she can feel her soul leaving her body when she is in a reverie, this is overshadowed by the image of Dairyman Crick with 'his great knife and fork [...] planted erect on the table, like the beginning of a gallows' (*TD*, p.147). The depiction of the experience of her soul in terms of physical subjection can also be seen after the death of Alec, when she crouches and the narrator describes her cry, which 'repeated in a low note of moaning, as if it came from a soul bound to some Ixionian wheel' (*TD*, p.402). These cumulative references are proleptic allusions to

Tess's death on the gallows and depict the soul as a site of punishment rather than correction. This is furthermore depicted through Tess's sense of guilt, which is depicted through her response to her landscape.

While in *The Return of the Native*, characterisation is divided into pastoral and tragic characters, Tess belongs to both modes, as is represented by dual naming: Tess Durbeyfield and Tess d'Urberville. Tess is also represented alternately as a pastoral character consonant with her surroundings or a tragic character feeling herself to be incongruent with her environment. Her response to her environment thus changes throughout the novel, depending on her circumstances. The increased emphasis on Tess's changing psychological experience of the world is depicted in her response to nature:

At times her whimsical fancy would intensify natural processes around her till they seemed a part of her own story. Rather they became a part of it; for the world is only a psychological phenomenon, and what they seemed they were (*TD*, p.114).

The landscape of *Tess of the d'Urbervilles* is frequently presented through the consciousness of Tess rather than of the narrator or implied spectator; this lends itself to the depiction of her internalisation of guilt resulting from her relationship with Alec and the birth of her child. This internalised guilt is represented through her view of her surroundings from the point at which Tess returns from Trantridge, and sees the sign-painter actually painting the landscape with Biblical law.

They seemed to shout themselves and make the atmosphere ring. Some people might have cried "Alas, poor Theology!" at the hideous defacement — the last grotesque phase of a creed which had served mankind well in its time. But the words entered Tess with accusatory horror (*TD*, p.108).

The words of religious law have a jarring effect in the context of natural scenery and peaceful landscape; again through words descriptive of physical punishment, they are, as Tess says, "horrible ... Crushing! Killing!" (*TD*, p.109). However, Tess cannot dismiss

the effect that this transformed landscape has on her and soon after, she endows Nature with her feelings of guilt:

The midnight airs and gusts, moaning amongst the tightly-wrapped buds and bark of the winter twigs, were formulae of bitter reproach. A wet day was the expression of irremediable grief at her weakness in the mind of some vague ethical being whom she could not class definitely as the God of her childhood, and could not comprehend as any other (*TD*, p.114).

Critics are divided as to the significance of 'Nature' in *Tess of the d'Urbervilles*. Bruce Johnson sees Tess as having an affinity with paganism that is consonant with Nature.³⁶ Charlotte Bonica argues that 'the natural world, particularly through its inexorable sexual force, displays cruelty and injustice.'³⁷ Bernard J. Paris points to the ultimate ambiguity in Hardy's depiction of Nature as to whether it is amoral or immoral, arguing that it is impossible to find any coherent moral framework through which to judge Tess's story.³⁸ John Alcorn argues that Tess's passive acceptance of her death is suggestive of an internalised acceptance of her guilt: 'If conventional attitudes destroy Tess, she herself is conventional and conformist. Her sense of guilt is the inner reflection, and the ruthless executioner, of a social verdict.'³⁹ Alcorn furthermore notes that Hardy's use of pastoral settings

expresses his sense of the opposition between man in nature and man in society. Increasingly, Hardy tended to see an opposition between the spontaneity of nature and the legal rigidities of social institutions and conventions.⁴⁰

³⁶ Bruce Johnson, "'The Perfection of Species' and Hardy's Tess," in U.C. Knoepfelmacher and G.B. Tennyson, ed., *Nature and the Victorian Imagination* (Berkeley: University of California Press, 1977), pp.259-77

³⁷ Charlotte Bonica, 'Nature and Paganism in Hardy's *Tess of the d'Urbervilles*' in *English Literary History* 49, 1982, pp.849-62, p.861

³⁸ Bernard J. Paris, "'A Confusion of Many Standards': Conflicting Value Systems in *Tess of the d'Urbervilles*" in *Nineteenth-Century Fiction* 24(1), 1969, pp.57-79

³⁹ John Alcorn, *The Nature Novel from Hardy to Lawrence* (London: Macmillan, 1977), p.17

⁴⁰ *Ibid*, p.16

Tess's psychological experience of her landscape is frequently at odds with the interpretation of her experience by the narrator, who uses the distinction to show the pernicious effects of religious and social law on the modern consciousness. Hardy draws a distinction between Nature and the laws of social convention to uphold Nature as a moral guide in opposition to manmade law: 'She had been made to break an accepted social law, but no law known to the environment in which she fancied herself such an anomaly' (*TD*, p.114). The text progressively presents Tess, in unison with her narrator, rejecting modern disciplinary power as 'an arbitrary law of society which had no foundation in Nature' (*TD*, p.303). Of *Tess* and *Jude*, Joseph Warren Beach writes, 'if nature is sometimes referred to in these books as a cruel step-mother, she more often appears as an enlightened champion against the obscurantism of social convention.'⁴¹ Particularly in *Tess of the d'Urbervilles*, Hardy used nature as an alternative moral exemplar to highlight the disparity between the uniformity of codified law and the individuality of each human life. This distinction is highlighted by the jarring effect of the vision of prison and gallows on the landscape. The prison is not imagery as in *The Return of the Native*, but real, and in complete disjunction with nature and with its surrounding architecture.

Against these far stretches of country rose, in front of the other city edifices, a large red-brick building, with level gray roofs, and rows of short barred windows bespeaking captivity, the whole contrasting greatly by its formalism with the quaint irregularities of the Gothic erections (*TD*, p.420).

Hardy presents a panoramic vision of Wintoncester at the close of the novel finally focusing on the 'ugly flat-topped octagonal tower,' which 'seemed the one blot on the city's beauty' (*TD*, p.420). It is again the psychological experience of the landscape that is emphasized as the scene is depicted through the eyes of Angel and Luza-Lu: 'it was with this blot, and not with the beauty, that the two gazers were concerned' (*TD*, p.420). While landscape in *The Return of the Native* has a concentrated symbolic function, in

⁴¹ Joseph Warren Beach, *The Technique of Thomas Hardy* (New York: Russell & Russell, 1962), p.174

Hardy's later novels it acts primarily as a reflection of the psychological experience of the protagonists.

In *Jude the Obscure* (1895), Hardy explores the effects of the power exacted by imprisonment on a literal level. Sue's experience of the Melchester training college in *Jude the Obscure* is based on Hardy's imaginative development of Whitelands Training College for schoolmistresses, which he visited in 1891, and his sympathetic response to the women there:

A community of women, especially young women, inspires not reverence but protective tenderness in the breast of one who views them. Their belief in circumstances, in convention, in the rightness of things, which you know to be not only wrong but damnably wrong, makes the heart ache, even when they are waspish and hard.... You feel how entirely the difference of their ideas from yours is of the nature of misunderstanding There is much that is pathetic about these girls, and I wouldn't have missed the visit for anything.⁴²

The Melchester College is presented as an egalitarian disciplinary centre of strict training, described as having 'mullioned and transomed windows, and a courtyard in front shut in from the road by a wall' (*JO*, p.151). It is also a prison presented in action, with emphasis on the physical and mental subjection of Sue. Critics have emphasised the components of Sue's surname Bridehead as being 'bride,' and 'head,' from 'maidenhead,' yet the name may have been chosen for its resonance of 'bridewell' and connotations of prison, which is mentally internalised. Sue is affected by the college's disciplinary system, as witnessed by Jude: 'Though she had been here such a short while, she was not as he had seen her last. All her bounding manner was gone; her curves of motion had become subdued lines' (*JO*, p.151). Her soul however, at this point resists subjection:

She had altogether the air of a woman clipped and pruned by severe discipline, an under-brightness shining through

⁴² F.E. Hardy, *The Life of Thomas Hardy*, p.246

from the depths which that discipline had not yet been able to reach (*JO*, p.152).

Jude the Obscure's 'super-sensitive' (*JO*, p.239) heroine Sue finds the strict timetabled system of the teachers' training college a prison against which she rebels in the same pattern of power struggle characteristic of Eustacia Vye. The difference is that Sue engages in a power struggle against the sources of power that oppress her on a literal level. Sue rebels initially against the training college system, but the novel develops more specifically into an attack on the marriage laws, which are presented as a definite and real source of power and oppression. Hardy's early title for the novel for *Jude the Obscure*, when he intended to publish it in *Harpers' Magazine*, was 'The Recalcitrants,' which emphasizes the thematic centrality of rebellion in the novel.⁴³ The tragic trope of the hereditary curse formerly used in *Tess of the d'Urbervilles* is developed in *Jude the Obscure* to relate specifically to marriage, a rebellion against conforming to legal obligation, as voiced by Sue:

"The men and women of our family are very generous when everything depends upon their good-will, but they always kick against compulsion. Don't you dread the attitude that insensibly arises out of legal obligation? Don't you think it is destructive to a passion whose essence is its gratuitousness?" (*JO*, p.286)

In *Jude the Obscure*, Hardy places emphasis on the soul as a site of discipline and oppression. The suffering of the three characters in the novel, Jude, Sue and Father Time is all depicted as heightened due to their super-sensitivity, which sets them apart from society:

The society of Spring Street and the neighbourhood generally did not understand, and probably could not have been made to understand, Sue and Jude's private minds, emotions, positions, and fears (*JO*, p.310).

⁴³ Richard L. Purdy, *Thomas Hardy: a Bibliographical Study* (London: British Library, 2002), p.87

The result of Jude and Sue's suffering is presented through its alignment with the experience of the soul in contrast with that of the body: 'Nobody molested them, it is true; but an oppressive atmosphere began to encircle their souls' (*JO*, p.311). Father Time as a product of Jude and Sue's care is presented as a heightened version of them both ('He was their nodal point, their focus, their expression in a single term' *JO*, p.346) and he expresses his pain as suffering of the soul: "I think that children should be killed directly before their souls come to 'em, and not allowed to grow big and walk about!" (*JO*, p.343) The comment reflects that souls are neither innate nor Christian but developed, which, Foucault states, is

the historical reality of the soul, which, unlike the soul represented by Christian theology, is not born in sin and subject to punishment, but is born rather out of methods of punishment, supervision and constraint.⁴⁴

Father Time's few words in the novel crystallise the experience of Jude and Sue and notably, one of his last expressions is the question to Jude about the colleges at Christminster: "Are all the great old houses gaols?" (*JO*, p.339). This recalls Sue's experience of imprisonment in the Melchester Training School, which is an experience that Jude ironically seeks to self-impose throughout the novel.

Sue's experience of the world, and more specifically of marriage as a form of imprisonment, is expressed through bird imagery. Reminiscent of the scene in which Tess breaks the necks of the shot pheasants to end their physical pain, Sue suffers the experience of the two pairs of pigeons which are to be sold and will be subjected to physical torture by their new owner: 'They were Sue's pets, and when it was found that they could not possibly be kept, more sadness was caused than by parting from all the furniture' (*JO*, p.318). The prospective sale of the caged birds notably comes in the context of Jude and Sue imprisoning themselves in a private room during the sale of their belongings to escape the observance and speculation of those attending the auction (*JO*, p.317). Sue frees the pigeons only to learn that they are caught again, most likely to be

⁴⁴ Michel Foucault, *Discipline and Punish: the Birth of the Prison* (Harmondsworth: Penguin, 1979), p.29

eaten, mirroring the pattern of Sue's experience in the novel, from imprisonment, to temporary freedom, to both imprisonment and physical subjection through her re-marriage to Phillotson. While Jude is sensitive to the plight of actual birds that they are obliged to sell, he fails to appreciate Sue's alignment of herself with them as a suffering being; when Sue tells Jude when she begins a relationship with him "The little bird is caught at last," (*JO*, p.281) Jude responds "Only nested." Gillingham, although advocating Sue's sustained imprisonment once she has chosen her course, perhaps best understands the danger of escaping such imprisonment, knowing the nature of society; he states to Jude: "I was always against your opening the cage-door and letting the bird go in such an obviously suicidal way" (*JO*, p.373). Phillotson explains that he allowed Sue leave him because he "was not her gaoler," (*JO*, p.262) but when she returns to him in re-marriage, he plans to treat Sue with "a little judicious severity, perhaps" (*JO*, p.373), echoing the language of modern disciplinary punishment.

Even in this most Foucauldian of Hardy's novels in which the experience of the world as a prison is represented both literally and metaphorically, it is the hangings in *Jude the Obscure* that dominate the novel. As in *Tess of the d'Urbervilles*, the representation of landscape as a site imbued with the imagery of criminal punishment is internalised in *Jude* and depicted through the psychological experience of the protagonists. The spectacle of the gallows, which provides such an imposing image in Hardy's tragic novels, exists in the landscape of *Jude*, however, execution imagery figures increasingly in the presentation of characters' consciousness and reflects their experience of the world. Mrs Edlin aligns the image of the gallows with the Fawley family history, casting the shadow of the gallows over their union. Although *Jude the Obscure* is primarily a realist text, it is the symbolic Father Time, who causes the lasting emotional impact of the novel in the scene of the child-hanging and suicide. As 'their expression in a single term' (*JO*, p.346), Father Time operates primarily as a symbol rather than as a character, and thus is a heightened expression of Jude and Sue's destructive, self-punishing, suicidal tendencies in his role in the text as executioner and suicide. But he is also a figure of historical transition, an anachronism, like Henchard, representing punishment of the body; he is thus: 'Age masquerading as juvenility and doing it so badly that his real self showed

through crevices' (*JO*, p.289). Also, as 'an enslaved and dwarfed Divinity' (*JO*, p.290) Father Time is simultaneously monarch and victim like Eustacia. The capacity for absorption of social standards and disciplinary power is expressed in the figure of Father Time; his internalisation of comments made in school about the nature of their family, and the experience of life is confirmed by Sue: "All is trouble, adversity and suffering!" (*JO*, p.342).

The murder-suicide has a hereditary quality; Father Time learnt from Sue that her freeing the birds from imprisonment and death is "a wicked thing" – the birds' destiny was to die, and this must be fulfilled. Father Time's carries out the murders and suicide from Malthusian motivation ('because we are too menmy,' *JO*, p.345) but Father Time, as the embodiment of monarchical punishment, represents, in Foucauldian terms, the reassertion of power over the body. Father Time's own corpse itself functions as a written text, as a retribution for crime:

The boy's face expressed the whole tale of their situation. On that little shape had converged all the inauspiciousness and shadow which had darkened the first union of Jude, and all the accidents, mistakes, fears, errors of the last (*JO*, p.346).

Sue understands the deaths of the children as an embodied expression of guilt and retribution for their action in breaking social law by not marrying. She reads the executions as an appropriate form of criminal justice: "Arabella's child-killing was a judgment – the right slaying the wrong" (*JO*, p.358). Sue's psychological response to the deaths is to see the boy's action as a form of nemesis (which is suggested also by Hardy's choice of name for the character, 'Father Time'), leading to her wish for punishment. She sees the death of the children as an overpowering spectacle of monarchical power:

"All the ancient wrath of the Power above us has been vented upon us. His poor creatures, and we must submit. There is no choice. We must. It is no use fighting against God!" (*JO*, p.351).

As Jude points out the reality of the source of their subjection (“man and senseless circumstance,”) Sue desists in her resistance to disciplinary power and responds: “But whoever or whatever our foe may be, I am cowed into submission. I have no more fighting strength left; no more enterprise. I am beaten, beaten!” (*JO*, p.351). She understands their role as being a spectacular, exemplary display of the results of their transgression of the social code: ““We are made a spectacle unto the world, and to angels, and to men!” I am always saying that now” (*JO*, p.351). Sue also expresses her wish to self-impose physical torture: “I cannot humiliate myself too much. I should like to prick myself all over with pins and bleed out the badness that’s in me!”⁴⁵ (*JO*, p.354). Ultimately, however, while Jude chooses subjection of his body, Sue responds to the ‘lesson’ of the boy’s death as providing an opportunity for disciplinary reformation, which she imposes on herself through her re-marriage to Phillotson: “I want a humble heart; and a chastened mind; and I have never had them yet!” (*JO*, p.353). Alcorn identifies Sue as being the most striking example of the internalisation of guilt and a sudden reversal of allegiance to social conformity:

Like Tess, Sue is described in the first chapters of Jude in terms of her attractive natural vitality. It is because of this vitality that Sue is destroyed; yet the repressive morality which drains this vitality is an authority to which she soon gives obsessive allegiance.⁴⁶

Sue’s internalization of guilt reaches a morbidity unparalleled in any of Hardy’s previous characters, and the narrator echoes and confirms Sue’s experience of life as a prison:

Chastened, world-weary, remorseful, the strain on her nerves had preyed upon her flesh and bones, and she appeared smaller in outline than she had formerly done, though Sue had not been a large woman in her days of rudest health (*JO*, p.375).

In *Jude the Obscure*, Sue enjoys a pastoral interlude in a country cottage, having missed the last train to Melchester, believing that there they are “Outside all laws except

⁴⁵ Malton, “The Woman Shall Bear Her Iniquity,” p.158

⁴⁶ Alcorn, *The Nature Novel from Hardy to Lawrence*, p.17

gravitation and germination” (*JO*, p.158). Hardy’s novels, however, show that the rural world of Wessex refuses to afford this kind of retreat from the legal world, which is superimposed through the urban imagery of courtroom and prison on the rural landscape reflecting the ‘more recently learned emotion’ of discipline on human consciousness.

Alcorn notes that ‘Hardy dominant use of ‘spirit of place’ in his last novels is closely connected with his increasingly bitter criticism of institutional morality,’⁴⁷ and that this is most notable in *Jude the Obscure*:

Jude is associated from the beginning of the novel with the life of nature; yet he is also endowed with a naïve belief in the sanctity of institutions: the church, the university, the sacrament of marriage; and these institutions mercilessly crush him.⁴⁸

The repressive, restrictive quality of social convention and the Law are contrasted with the freedom of instinct of Hardy’s protagonists, such as Sue, who argues that “it was Nature’s intention, Nature’s law and *raison d’etre*, that we should be joyful in what instincts she afforded us – instincts which civilization had taken upon itself to thwart” (*JO*, p.348). In a philosophical reflection, Sue echoes the thoughts of her author, expressing Hardy’s autobiographical reflection⁴⁹ as she learns that

the first cause worked automatically like a somnambulist, and not reflectively like a sage; that at the framing of the terrestrial conditions there seemed never to have been contemplated such a development of emotional perceptiveness among the creatures subject to those conditions as that reached by thinking and educated humanity. But affliction makes opposing forces loom anthropomorphous; and those ideas were now exchanged for a sense of Jude and herself fleeing from a persecutor (*JO*, p.351).

⁴⁷ *Ibid*, p.20

⁴⁸ *Ibid*, p.18

⁴⁹ F.E. Hardy, *The Life of Thomas Hardy*, p.153

It is institutional Law that conflicts with man's interests and thus the power struggle of man against an oppressive force; 'those laws framed merely as social expedients by humanity, without a basis in the heart of things.'⁵⁰ Nature is used as a foil for social law represented by these institutions; Hardy writes in his postscript to *Jude the Obscure*: 'in Diderot's words, the civil law should be only the enunciation of the law of nature' (*JO*, p.29).

Raymond Chapman makes a central claim for tragedy, that 'the conflict between free will and some kind of external control is fundamental to the tragic catastrophe in the dramas of ancient Greece and in those of Elizabethan and Jacobean England.'⁵¹ Chapman notes that while there are none of the retributory props of classical tragedy, 'punishment is often awarded, by the judicial system which takes the life of Tess or by the cumulative rejection of Henchard and Jude.'⁵² Chapman thus points to the significance of the Law in Hardy's construction of a tragic structural framework for his novels. Tragedy does not follow a simplistic structural pattern of crime and punishment, but seeks to vindicate the transgressive hero and to depict them as 'more sinned against than sinning.' Thus, unlike detective fiction, tragedy raises more questions than it answers. As Raymond Williams has observed of *Jude the Obscure*, Jude is destroyed not by his committing a crime or a sin, but by the limitations imposed on his life and thus *Jude the Obscure* is 'profoundly subversive of the limiting structure.'⁵³ In his 1912 Postscript to *Jude*, Hardy points to the marriage laws as constituting this limiting structure, however, it is not in all of Hardy's tragic novels that the narrative presents such a definite form of the Law as a limiting structure. Hardy's depiction of the Law is frequently an indefinite sense of social law, which constrains and restricts the tragic individual.

⁵⁰ Thomas Hardy, 'Candour in English Fiction' in Harold Orel, ed., *Thomas Hardy's Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.125-33, p.129

⁵¹ Raymond Chapman, 'Hardy and a New Perception of Tragedy' in Charles P.C. Pettit, ed., *Reading Thomas Hardy* (London: Macmillan, 1998), pp.138-155, p.143

⁵² *Ibid*, p.145

⁵³ Raymond Williams, 'Forms of English Fiction in 1848' in Francis Barker et al ed., *1848: The Sociology of Literature: Proceedings of the Essex Conference on the Sociology of Literature, July 1977* (Essex: University of Essex, 1978), pp.277-290, p.287

For Hardy, modern tragedy involved critiquing established legal doctrines and social codes, which both supported and were supported by the Law. In his 1890 essay, 'Candour in English Fiction,' Hardy states: 'Writers are conscious that the revised presentation of tragedy demands enrichment by further truths – in other words, original treatment.'⁵⁴ Thus, 'the crash of broken commandments is as necessary an accompaniment to the catastrophe of a tragedy as the noise of drum and cymbals to a triumphal march.'⁵⁵ Hardy experienced a critical backlash for finding his tragedy in the breaking of legal doctrines and social codes and observed that '[a]rtistic effort always pays heavily for finding its tragedies in the forced adaptation of human instincts to rusty and irksome moulds that do not fit them.'⁵⁶ Yet for Hardy, the breaking of legal doctrines and social codes was central to his conception of tragedy. Like Fielding and Dickens, Hardy's exposition of the operation of the Law was reformative, but less didactically so, with his discussion of legal issues operating on a metaphorical level.

Although Hardy never gave any direct comment on his views or suggestions for legal reform, his 'Novels of Character and Environment' depict disparity between natural law and social law through imbuing natural scenery with imagery pertaining to state punishment and can thus be seen as a metaphorical critique of the criminal justice system. Following legal marginalization, Hardy's tragic protagonists experience the world as a penitentiary, which results in their desire to renounce life. Hardy thus drew on Schopenhauer's comparison of the world as a penitentiary to bring about the death of the tragic hero. Hardy progressively formulated his own definitions of tragedy, which increasingly are related to the operation of the Law. In 1895 he noted that

Tragedy may be created by an opposing environment either of things inherent in the Universe, or of human institutions. If the former be the means exhibited and deplored, the writer is regarded as impious, if the latter as subversive and dangerous.⁵⁷

⁵⁴ Thomas Hardy, 'Candour in English Fiction' in Harold Orel ed., *Thomas Hardy: Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.125-33, p.127

⁵⁵ *Ibid*, p.129

⁵⁶ Postscript to *Jude the Obscure* (1912)

⁵⁷ F.E. Hardy, *The Life of Thomas Hardy*, p.290

Hardy was aware of the subversiveness of exposing the limitations created by social institutions and to temper his criticism of social institutions his narratives also depict the fate of the tragic hero as partly self-willed. In April 1878, when he was finishing the last chapters of *The Return of the Native*, Hardy made a note in his diary:

A Plot, or Tragedy, should arise from the gradual closing in of a situation that comes of ordinary human passions, prejudices and ambitions, by reason of the characters taking no trouble to ward off the disastrous events produced by the said passions, prejudices and ambitions.⁵⁸

Hardy maintained this delicate balance to give a limited criticism of the social law through depicting the fate of the tragic hero as a collision between the hero and their environment. Although Hardy's critique was buried in fictional narrative, he consistently presents the Law as an inhibiting and ultimately destructive force and the root of tragedy in his 'Novels of Character and Environment.'

⁵⁸ *Ibid*, p.123

CONCLUSION

The Law is not a universal and timeless codified set of rules but is constructed and amended according to the needs of society at a given time. In a democracy the Law shifts from one era to the next trying to reflect the general public consensus. The nineteenth century witnessed an unprecedented series of legal reforms. In his study of nineteenth-century legal reform Albert Dicey notes that the role of codifying amendments to judicial procedure fell not to judges, but to theorists and academics writing on legal procedure and examining legal anomalies.¹ Although Dicey states that judges 'are more likely to be biased by professional habits and feeling rather than by popular sentiment of the Law,'² he notes that popular opinion held increasing sway over judicial reform as the nineteenth century progressed.³ Not only legal academics but novelists used literature as a forum for the exposure of legal anomalies. Novelists created fictional precedents for discussion in the public domain and by writers on Law, which in turn generated pressure toward legal reform. Dicey cites the reformatory influence of Charles Dickens who denounced public execution, the inefficiency of the Court of Chancery, the prison system, the education system and the costliness of divorce.⁴ Subsequently Thackeray and George Eliot utilised their public literary roles and the influence they held to expose their concerns with the operation of the Law within the realm of fiction. Victor Hugo's preface to *Les Misérables* emphasizes the expository and reformatory role of fiction:

So long as there shall exist, by reason of law and custom, a social condemnation, which, in the face of civilization, artificially creates hells on earth...so long as ignorance and misery remain on earth, books like this cannot be useless.⁵

¹ Albert Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London: Macmillan, 1905), p.365

² *Ibid*, p.364

³ *Ibid*, p.363

⁴ *Ibid*, p.421

⁵ Quoted by F.B. Pinion in *Thomas Hardy: Art and Thought*, (London: Macmillan, 1977), p.185. F.B. Pinion argues that this quotation would have struck Hardy as he read it while contemplating *Tess of the d'Urbervilles* and *Jude the Obscure*.

Legal reform is designed to keep the Law as simple and comprehensive as possible, but ultimately fulfils the utilitarian principle of the greatest happiness for the greatest number, the corollary of which is the exclusion of a minority. While Hardy frequently engaged with legal debates subsequent to reform, his narratives provide representation of the minority including the agricultural labourer and the fallen woman, for whom developments provided by legal reform has provided no significant change due to financial constraints or stringent social morality.

Hardy's exposition of the operation of the Law was at times explicitly reformatory. Melanie Williams cites *Tess of the d'Urbervilles* as 'a pertinent text with which to critique aspects of the doctrine of provocation primarily because it *upbraids* the law.'⁶ *Tess* sparked a heated debate in the public domain as Hardy notes in *The Life*:

Society remarks on Tess were curious and humorous [...] "The Duchess of Abercorn tells me that the novel has saved her all future trouble in the assortment of her friends. They have been almost fighting across her dinner-table over Tess's character. What she now says to them is 'Do you support her or not?' If they say 'No indeed. She deserved hanging. A little harlot!' she puts them in one group. If they say 'Poor wronged innocent!' and pity her, she puts them in the other group where she is herself." He was discussing the question thus with another noble dame who sat next to him at a large dinner-party, when they waxed so contentious that they were startled to find the whole table of two-and-twenty silent, listening to their theories on this vexed question. And a well-known beauty and statesman's wife, also present, snapped out at him: "Hanged? They ought all to have been hanged!"⁷

Tess not only sparked a moral debate over society dinner tables but also introduced debate into the public arena over legal issues raised by the narrative. Andrew Lang argued that the sentence of execution was 'rather improbable in this age of halfpenny newspapers and appeals to the British public. The black flag would never have been

⁶ Melanie Williams, 'Tess of the d'Urbervilles and the Law of Provocation' in Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature*, vol. 2 (Oxford: Oxford University Press, 1999), pp.167-90, p.170

⁷ F.E. Hardy, *The Life of Thomas Hardy*, p.258

hoisted.’⁸ Walter Morrison argued that Angel Clare was arguably an accessory before and certainly an accessory after the fact of Tess’s murder of Alec and that he ‘would have got 12 months at least, and so could not have been outside Winchester on the morning of Tess’ execution.’⁹ However, Hardy characteristically took great care in making the outcome of Tess’s crime legally accurate and his response demonstrates his knowledge of the legal retribution applicable in the case:

The writer is in error—Not an accessory before, nor after—not having believed her story. If guilty of culpable negligence 3 months wd have been enough —& this wd have elapsed by time of execution—the time he had waited for trial being taken into account in sentence.¹⁰

Tess of the d’Urbervilles brought into public debate issues regarding the legal definition of rape and as Melanie Williams notes, raises questions regarding provocation. Through representing an omniscient version of legal events in a fictional domain, Hardy’s novel posits a more comprehensive and compassionate representation of a potentially real legal case of murder as a result of provocation. The emotional voice of Hardy’s narratives challenges and undermines the detached voice of the Law, most notably in his acerbic commentary on Tess’s execution that ‘Justice was Done.’

Tess of the d’Urbervilles marks the culmination of Hardy’s literary engagement with legal issues, but as this thesis demonstrates, Hardy engaged with legal issues in a fictional domain from his earliest published novel, *Desperate Remedies*, through to his last, *Jude the Obscure*, most notably with the issue of legal representation. While *Desperate Remedies* and *Far from the Madding Crowd* engage with the issues of legal insanity, execution and representation of the accused, each of Hardy’s tragic novels points to the failure of the Law as primarily a failure of language and articulation. Hardy’s domestic trial scenes serve to highlight the effect of the Prisoners’ Counsel Act of 1836 which provided a forum for equal legal representation of victim and accused, but as Grossman

⁸ Andrew Lang, *New Review* (February 1892) cited by Hardy in Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 2, p.62

⁹ Purdy and Millgate, ed., *The Collected Letters of Thomas Hardy*, vol. 2, p.290

¹⁰ *Ibid*, p.290

notes, when ‘the lawyers started doing the talking, the defendant was swiftly and almost completely silenced.’¹¹ As Paul Ricoeur notes, the impulse to narrate is associated with the lost voices of the oppressed and disempowered.¹² Hardy’s narratives provide an alternative representation of marginalized figures, such as the agricultural labourer and the ‘fallen woman,’ first given sympathetic representation in *Far from the Madding Crowd* and *The Return of the Native*. Hardy’s narrators act as defence lawyers for the marginalised, those who have transgressed a social convention rather than the Law, articulating their case with exculpatory evidence, otherwise suppressed in a Victorian guilt and shame culture.

William Davis notes ‘Hardy’s representation of life as an evolving legal spectacle, one in which the Law enables yet also interferes with human plans in the earlier novels and stories and eventually “prescribes” human life in the later works.’¹³ This pattern, as implied by Davis, mirrors the development of Hardy’s commitment to writing tragedy. Throughout his literary career Hardy formulated definitions of modern tragedy, which involved critiquing established legal doctrines and social codes that both supported and were supported by the Law. In his 1890 essay, ‘Candour in English Fiction,’ Hardy states:

In perceiving that taste is arriving anew at the point of high tragedy, writers are conscious that its revived presentation demands enrichment by further truths—in other words, original treatment: treatment which seeks to show Nature’s unconsciousness not of essential laws, but of those laws framed merely as social expedients by humanity, without a basis in the heart of things; treatment which expresses the triumph of the crowd over the hero, of the commonplace majority over the exceptional few.¹⁴

¹¹ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (London: John Hopkins UP, 2002), p.21

¹² Paul Ricoeur, *Time and Narrative*, translated by Kathleen Blamey, Kathleen McLaughlin and David Pellauer, (University of Chicago Press, 1984), vol. 1, p.75

¹³ William A. Davis, *Thomas Hardy and the Law: Legal Presences in Hardy’s Life and Fiction* (Newark; London: University of Delaware Press, Associated University Presses, 2003), p.9

¹⁴ Thomas Hardy, ‘Candour in English Fiction’ in Harold Orel, ed., *Thomas Hardy’s Personal Writings: Prefaces, Literary Opinions, Reminiscences* (London: Macmillan, 1967), pp.125-33, p.127

As he experienced a critical backlash for finding his tragedy in the breaking of legal doctrines and social codes Hardy observed that 'artistic effort always pays heavily for finding its tragedies in the forced adaptation of human instincts to rusty and irksome moulds that do not fit them.'¹⁵ Yet for Hardy, the breaking of legal doctrines and social codes was central to his conception of tragedy and argued that 'the crash of broken commandments is as necessary an accompaniment to the catastrophe of a tragedy as the noise of drum and cymbals to a triumphal march.'¹⁶

While Hardy's early novels are not tragedies they have tragic elements that have a legal basis. While the early novels close with the pastoral resolution required by editors and readers, much of the narrative interest of *Desperate Remedies* and *Far from the Madding Crowd* is centred on the psychology of the murderers William Boldwood and Aeneas Manston. Other early novels that close with a pastoral resolution centre around morally transgressive behaviour that is treated as though criminal. Both *A Pair of Blue Eyes* and *The Return of the Native*, which marks Hardy's definitive commitment to tragedy, include domestic trial scenes in which the heroine is accused of faithlessness in an interrogation scene replete with legalese. From hereon, as Hardy committed to writing in the mode of tragedy, his tragic plots unfold as a result of a moral transgression for which the protagonist undergoes a domestic trial scene. The death of the tragic protagonist is brought about as a direct result of this metaphorical trial scene, as a result of their flawed and incomplete representation. Hardy's narratives seek to fill the deficit of legal trial, which typically reduces ethically complex cases to facts and appearance rather than to a comprehensive exploration of character. Hardy thus provides alternative third person representation, depicted through non-legal English in contrast to legal language, which is depicted as elitist, male and too reductive for cases of ethical complexity.

¹⁵ Postscript to *Jude the Obscure* (1912)

¹⁶ *Ibid*, p.129

AFTERWORD

On 16th November 1910, Hardy received the freedom of the borough of Dorchester. His acceptance speech encapsulates the impact that the images of physical state violence had on him and on his fictional landscapes, namely his fictional locale of Casterbridge:

The chronicle of the town has vivid marks on it. Not to go back to events of national importance, lurid scenes have been enacted here within living memory, or not so many years beyond it, whippings in front of the town-pump, hangings on the gaol-roof, I myself saw a woman hanged not 100 yards from where we now stand, and I saw, too, a man in the stocks in the back part of this very building. Then, if one were to recount the election excitements, Free Trade riots, scenes of soldiers marching down the town to war, the proclamation of the Sovereigns now crumbled to dust, it would be an interesting local story.¹

Hardy here considers scenes of agricultural uprising and subjection as interesting material for a story and indeed such rural scenes from his youth form the historical backdrop for his tragic fiction. Significantly, he focuses imaginatively on the experience of those suffering the harshest sentences of the Law rather than on those obliged to enforce the Law. This official speech reflects his fictional representations of legal issues in which his sympathy for the rural poor outweighs the sense of justice required by his magisterial office. His sympathetic leaning can be considered with reference to a note he included in his autobiography, in which he records the thoughts of Mary Jeune, wife of Justice Francis Jeune, on her interaction with the socially marginalized:

Mary Jeune says that when she tries to convey some sort of moral or religious teaching to the East-end poor, so as to change their views from wrong to right, it ends by their convincing her that their view is the right one – not by her convincing them.²

¹ F.E. Hardy, *The Life of Thomas Hardy*, p.379

² *Ibid*, p.216

Hardy's depiction of the agricultural labourers of Egdon, the evicted life-holders of Marlott and social outcasts of Christminster reveal that he held a lot of sympathy for those who are legally and socially disenfranchised. Ultimately, like Mrs Jeune, he was won over by their subjective accounts of their experience of life and although his loyalties were divided, Hardy sympathetically represents the marginalised voices and reveals their exclusion from legal process and their suffering at the hands of the Law.

...

Hardy's courtroom activity was sporadic and while he was an active magistrate particularly during the 1880s, his courtroom attendance increasingly seems to have been due to his interest in high-profile cases. Nonetheless Hardy's court attendance lasted from 1884 to 1912. When Hardy died on January 11th 1928 he was honoured by the magistrates of the Borough Petty Sessions when they met on 16 January and stood in silence to demonstrate their respect for him.³ Justice Edward Acton likewise paid tribute to Hardy at the winter Assizes of January 1928. Although he did not mention Hardy's court activities, and Sampson speculates that perhaps he did not know about them, Justice Acton spoke of Hardy's greatness as a writer.⁴ It is significant that Hardy's lifelong interest in the Law was subsumed by his enduring literary career, which drew heavily on his legal interests. Indeed, it could be argued that Hardy's legal activity was primarily enacted through fiction. While Fielding and Dickens used the form of the novel for an overt reformatory discussion of deficits in the legal system, Hardy used the novel as a forum in which to test newly-developed legal practices. Hardy was always guarded about his political and legal views and did not endorse any particular system of legal reform. In fact his speculative system in *The Life* on a projected system of the operation of Law is retracted:

I consider a social system based on individual spontaneity
to promise better for happiness than a curbed and uniform

³ DCC, 19 Jan. 1928, p.2, quoted by Edward C. Sampson in 'Thomas Hardy: Justice of the Peace,' *Colby Library Quarterly* 13, 1977, pp.263-73, p.272

⁴ DCC, 26 Jan. 1928, p.6, quoted by Sampson, in 'Thomas Hardy: Justice of the Peace,' p.272

one under which all temperaments are bound to shape themselves to a single pattern of living. To this end I would have society divided into *groups of temperaments*, with a different code of observances for each group. It is doubtful if this Utopian scheme possessed Hardy's fancy for any long time.⁵

Hardy's novels provide no solutions. Although ending with a cathartic re-establishment of a new stabilized order purged of the tragic hero and the voices of the rural poor ultimately silenced, one of the enduring impressions of Hardy's tragic novels is the sympathetic representation of the rural workfolk. Carol Farrelly notes that

although it is incredibly and frustratingly difficult to recover the responses of ordinary readers to Hardy's writing, especially the responses of neglected or patronized working-class readers, rare and wonderful traces do exist.⁶

She cites in full the response of a working-class man to Hardy's fiction from the turn of the century:

"I've been up against it," said the foreman, "up against it for thirty years, and I reckon I know what pain and sorrow mean... but ..." Here he paused; then contemplatively and earnestly: "Hardy has helped me more than any other novelist, because I feel he knows what pain and sorrow mean, because I feel he has suffered; and I don't care a rap for any writer who hasn't suffered – he can't help me." "How does Hardy help you?" I asked. "He has no special consolation to offer you, has he?" "Exactly," said the first speaker triumphantly. "Hardy tells you skies are grey, and leaves it at that. He holds out no hope for better things in the future." "He believes in human nature," said the foreman; "he makes you realize the tremendous power of love...he shows what human sympathy can do...in fact, I

⁵ F.E. Hardy, *The Life of Thomas Hardy*, p.274

⁶ Carol Farrelly, 'Hardy, Candour and the 'Doll of English Fiction' in *Thomas Hardy Journal* 18(3), 2002, pp.73-83

feel after putting down one of his books that human nature's
a far grander thing than I ever thought it before."⁷

⁷ Arthur Compton-Rickett, *I Look Back: Memories of Fifty Years* (London: Herbert Jenkins Ltd., 1933), pp.282; 283-4, quoted by Carol Farrelly in 'Hardy, Candour and the 'Doll of English Fiction' in *Thomas Hardy Journal* 18(3), 2002, pp.73-83, p.81

BIBLIOGRAPHY

Primary Sources

- Archer, William, Ed. *Real Conversations with Eminent Characters in Literature and the Drama*. London, William Heinemann, 1904.
- Bjork, Lennart A., Ed. *The Literary Notebooks of Thomas Hardy*. Vol. 1. London: Macmillan, 1985.
- *The Literary Notebooks of Thomas Hardy*. Vol. 2. London: Macmillan, 1985.
- Blathwayt, Raymond. 'A Chat with the Author of *Tess*.' *Thomas Hardy and His Readers: a Selection of Contemporary Reviews*. Ed. Laurence Lerner and John Holmstrom. London: Bodley Head, 1968. 90-97.
- Collins, Vere H. *Talks with Thomas Hardy At Max Gate 1920-1922*. London: Duckworth, 1978.
- Gatrell, Simon. *The Return of the Native: a Facsimile of the Manuscript with Related Materials*. London: Garland, 1986.
- Gibson, James, Ed. *The Complete Poems of Thomas Hardy*. London: Macmillan, 2001.
- *Thomas Hardy: Interviews and Recollections*. Basingstoke: Macmillan, 1999.
- Greenslade, William, Ed. *Thomas Hardy's 'Facts' Notebook: a Critical Edition*. Aldershot: Ashgate, 2003.
- Hardy, Florence E. *The Life of Thomas Hardy*. London: Macmillan, 1994.
- Hardy, Thomas. *Desperate Remedies*. Ed. P N. Furbank. London: Macmillan, 1974.
- *Far From the Madding Crowd*. Ed. P N. Furbank. London: Macmillan, 1974.
- *Jude the Obscure*. Ed. P N. Furbank. London: Macmillan, 1974.
- *Tess of the D'Urbervilles*. Ed. P N. Furbank. London: Macmillan, 1974.
- *The Mayor of Casterbridge*. Ed. P N. Furbank. London: Macmillan, 1974.
- 'The Mayor of Casterbridge.' *The Graphic*. 1866.
- *The Return of the Native*. Ed. P N. Furbank. London: Macmillan, 1974.

- *The Return of the Native*. Ms. 11. University College Dublin, Dublin.
- 'The Three Strangers.' *Wessex Tales and a Group of Noble Dames*. Ed. F B. Pinion. London: Macmillan, 1977. 13-32.
- *The Three Wayfarers*. New York; London: The Fountain P; the Cayme P, 1930.
- *Wessex Tales and a Group of Noble Dames*. Ed. Frank B. Pinion. London: Macmillan, 1977.
- Orel, Harold, Ed. *Thomas Hardy's Personal Writings: Prefaces, Literary Opinions, Reminiscences*. London: Macmillan, 1967.
- Purdy, Richard L., and Michael Millgate, Ed. *The Collected Letters of Thomas Hardy* Vol. 1. 1840-1892. Oxford: Clarendon, 1978.
- *The Collected Letters of Thomas Hardy*. Vol. 2. 1893-1901. Oxford: Clarendon, 1980.
- *The Collected Letters of Thomas Hardy*. Vol. 3. 1902-1908. Oxford: Clarendon, 1982.
- *The Collected Letters of Thomas Hardy*. Vol. 4. 1909-1913. Oxford: Clarendon, 1984.
- *The Collected Letters of Thomas Hardy*, Vol. 5. (Oxford: Clarendon Press, 1978)

Critical Works on Hardy

- Alcorn, John. *The Nature Novel From Hardy to Lawrence*. London: Macmillan, 1977.
- Anderson, Marcia Lee. 'Hardy's Debt to Webster in *The Return of the Native*. *Modern Language Notes* 54 (1939): 497-501.
- Arkans, Norman. 'Hardy's Narrative Muse and the Ballad Connection.' *Thomas Hardy Annual* 1 (1984): 131-156.
- Baldridge, Cates. 'Observation and Domination in Hardy's *The Woodlanders*' *Victorian Literature and Culture* Vol. 21. Ed. John Maynard and Adrienne Auslander Munich. New York: AMS P, 1993. 191-209.
- Beach, Joseph Warren. *The Technique of Thomas Hardy*. New York: Russell and Russell, 1962.

- Bonica, Charlotte. 'Nature and Paganism in Hardy's *Tess of the D'Urbervilles*.' *English Literary History* 49 (1982): 849-862.
- Brady, Kristin. *The Short Stories of Thomas Hardy*. London: Macmillan, 1982.
- Bulaila, A. Aziz M. 'Desperate Remedies: Not Just a Minor Novel' in *Thomas Hardy Journal* 14 (1998): 65-74
- Bullen, J B. *The Expressive Eye: Fiction and Perception in the Work of Thomas Hardy*. Oxford: Clarendon, 1986.
- Chapman, Raymond. 'Hardy and a New Perception of Tragedy.' *Reading Thomas Hardy*. Ed. Charles P. C. Pettit. London: Macmillan, 1998. 138-155.
- Chew, Samuel. *Thomas Hardy, Poet and Novelist*. Bryn Mawr, PA.: Bryn Mawr College, 1921.
- Clarke, Robert W. 'Farmer Boldwood: Shadow of a Magnitude.' *West Virginia University Bulletin Philological Papers* 17 (1970): 45-56.
- Dainotto, Roberto M. 'Mapping the Country: Thomas Hardy and the Return of Topography.' *Place in Literature: Regions, Cultures, Communities*. London: Cornell UP, 2000. 34-74.
- Dalziel, Pamela. 'Whatever Happened to Elizabeth Jane?: Revisioning Gender in *The Mayor of Casterbridge*.' *Thomas Hardy: Texts and Contexts*. Ed. Phillip Mallett. Basingstoke: Macmillan, 2002. 64-86.
- Davidson, Donald. 'The Traditional Basis of Thomas Hardy's Fiction.' *Hardy: a Collection of Critical Essays*. Ed. Albert J. Guerard. Englewood Cliffs, New Jersey: Prentice-Hall, 1963. 10-23.
- Davis, William A. "'But He Can Be Prosecuted for This": Legal and Sociological Backgrounds of the Mock Marriage in Hardy's Serial *Tess*' *Colby Library Quarterly* 25 (1989): 28-41.
- . 'The Rape of Tess: Hardy, English Law, and the Case for Sexual Assault.' *Nineteenth-Century Literature* 52 (1997): 221-231.
- . *Thomas Hardy and the Law: Legal Presences in Hardy's Life and Fiction*. Newark; London: University of Delaware P, 2003.
- Ebbatson, Roger. *Hardy: the Margin of the Unexpressed*. Sheffield: Sheffield Academic P, 1993.

- Farrelly, Carol. 'Hardy, Candour and the 'Doll of English Fiction' *Thomas Hardy Journal* 18 (2002): 73-83.
- Firor, Ruth A. *Folkways in Thomas Hardy*. New York: A.S. Barnes, 1962.
- Fisher, Joe. 'The Mayor of Casterbridge: Made of Money.' *The Mayor of Casterbridge: Contemporary Critical Essays*. Ed. Julian Wolfreys. London: Macmillan, 2000. 132-152.
- Garson, Marjorie. 'The Mayor of Casterbridge: the Bounds of Propriety.' *The Mayor of Casterbridge: Contemporary Critical Essays*. Ed. Julian Wolfreys. London: Macmillan, 2000. 80-115.
- Giordano Junior, Frank R. "I'd Have My Life Unbe": *Thomas Hardy's Self-Destructive Characters*. Alabama: University of Alabama P, 1984.
- Gittings, Robert. *The Older Hardy*. London: Heinemann Educational Books, 1978.
- . *Young Thomas Hardy*. London: Heinemann Educational Books, 1975.
- Gregor, Ian. *The Great Web: the Form of Hardy's Major Fiction*. London: Faber, 1974.
- Hawkins, Desmond. 'Hardy's Wessex.' *Essays by Divers Hands: Being the Transactions of the Royal Society of Literature*. Ed. Sir Angus Wilson. Woodbridge: Boydell P for the Royal Society of Literature, 1984. 75-89.
- Holmstrom, John, and Laurence Lerner, Ed. *Thomas Hardy and His Readers: a Selection of Contemporary Reviews*. London: The Bodley Head Limited, 1968.
- Hooker, Jeremy. *Writers in a Landscape*. Cardiff: University of Wales P, 1996.
- Hyde, William J. 'Hardy's View of Realism: a Key to the Rustic Characters.' *Victorian Studies: a Journal of the Humanities, Arts and Sciences* 2 (1958): 45-59.
- Johnson, Bruce. "'The Perfection of Species and Hardy's Tess'" *Nature and the Victorian Imagination*. Ed. U C. Knoepfelmacher and G B. Tennyson. Berkeley: University of California P, 1977. 259-277.
- Johnson, Lionel. *The Art of Thomas Hardy*. 2nd ed. New York: Haskell House, 1973.
- Kay Robinson, Denys. *Hardy's Wessex Reappraised*. New York: St. Martin's Press, 1972.
- Kincaid, James. 'Absence, Death and Eroticism in *Tess*.' *Sex and Death in Victorian Literature*. Ed. Regina Barreca. London: Macmillan, 1990. 9-31.

- Knowles, Ronald. 'Carnival and Tragedy in Thomas Hardy's Novels.' *Thomas Hardy Journal* 21 (2005): 109-124.
- Lanning, George. 'Thomas Hardy and the Bang-Up Locals.' *Thomas Hardy Journal* 16 (2000): 54-58.
- Lawrence, David H. *Study of Thomas Hardy and Other Essays*. Ed. Bruce Steele. Cambridge: Cambridge UP, 1985.
- Lindgren, Charlotte. 'Thomas Hardy: Grim Facts and Local Lore.' *Thomas Hardy Journal* 1 (1985): 18-27.
- Mallett, Phillip. "'Smacked, and Brought to Her Senses": Hardy and the Clitheroe Abduction Case.' *Thomas Hardy Journal* 8 (1992): 70-73.
- . *The Achievement of Thomas Hardy*. Basingstoke: Macmillan, 2000.
- Malton, Sara A. "'The Woman Shall Bear Her Iniquity": Death as Social Discipline in Thomas Hardy's *The Return of the Native*." *Studies in the Novel* 32 (2000): 147-164.
- Marroni, Francesco. "'The Three Strangers" and the Verbal Representation of Wessex.' *Thomas Hardy Journal* 8 (1992): 26-39.
- Matz, Aaron. 'Terminal Satire and *Jude the Obscure*.' *English Literary History* 73 (2006): 519-547.
- McCarty, Steve. "'That We Can Talk of Another Time": Boldwood's Madness and Victorian Law.' *Thomas Hardy Journal* 21 (2005): 94-102.
- Millgate, Michael. *Thomas Hardy: a Biography*. Oxford: Oxford UP, 1982.
- . *Thomas Hardy: a Biography Revisited*. Oxford: Oxford UP, 2004.
- . *Thomas Hardy: His Career as a Novelist*. London: Macmillan, 1994.
- Morgan, Rosemarie. *Cancelled Words: Rediscovering Thomas Hardy*. London: Routledge, 1992.
- Moses, Michael V. 'Agon in the Marketplace: *The Mayor of Casterbridge* as Bourgeois Tragedy.' *The Mayor of Casterbridge: Contemporary Critical Essays*. Ed. Julian Wolfreys. London: Macmillan, 2000. 170-201.
- Moynahan, Julian. '*The Mayor of Casterbridge* and the Old Testament's First Book of Samuel: a Study of Some Literary Relationships.' *Publications of the Modern Language Association of America* 71 (1956): 118-130.

- Neale, Catherine. 'Desperate Remedies: the Merits and Demerits of Popular Fiction.' *Critical Survey* 5 (1993): 117-122.
- O'Toole, Tess. *Genealogy and Fiction in Hardy: Family Lineage and Narrative Lines*. Basingstoke: Macmillan, 1997.
- Orel, Harold. 'Hardy's Interest in the Law.' *The Unknown Thomas Hardy: Lesser-Known Aspects of Hardy's Life and Career*. Brighton: The Harvester P Limited, 1987. 127-145.
- Paris, Bernard J. "'A Confusion of Many Standards': Conflicting Value Systems in *Tess of the D'Urbervilles*." *Nineteenth-Century Fiction* 24 (1969): 57-79.
- Pether, Penelope. 'Hardy and the Law.' *Thomas Hardy Journal* 7 (1991): 28-41.
- . 'Sex, Lies and Defamation: The Bush Lawyer of Wessex.' *Cardozo Studies in Law and Literature*, 6 (1994)
- Pettit, Charles P. C. *Celebrating Thomas Hardy: Insights and Appreciations*. London: Macmillan, 1996.
- . *Reading Thomas Hardy*. London: Macmillan, 1998.
- Pinion, Francis B. *A Hardy Companion: a Guide to the Works of Thomas Hardy and Their Background*. London: Macmillan, 1968.
- . *Hardy the Writer: Surveys and Assessments*. Oxford: Clarendon, 1990.
- . *The Art and Thought of Thomas Hardy*. London: Macmillan, 1977.
- Pite, Ralph. *Thomas Hardy: The Guarded Life*. London: Picador, 2006.
- Purdy, Richard L. *Thomas Hardy: a Bibliographic Study*. London: British Library, 2002.
- Roberts, Patrick. 'Patterns of Relationship in *Desperate Remedies*.' *Thomas Hardy Journal* 8 (1992): 50-57
- Rooney, Ellen. "A Little More Than Persuading": *Tess* and the Subject of Sexual Violence. *Rape and Representation*. Ed. Lynn A. Higgins and Brenda Silver. New York: Columbia UP, 1991. 86-114.
- . 'Tess and the Subject of Sexual Violence: Reading, Rape, Seduction.' *Tess of the d'Urbervilles: Complete, Authoritative Text with Biographical and Historical Contexts, Critical History and Essays from Five Contemporary Critical Perspectives*. Ed. John Paul Riquelme. Basingstoke: Macmillan, 1998. 462-83

- Salter, C H. *Good Little Thomas Hardy*. London: Macmillan, 1981.
- Sampson, Edward C. 'Thomas Hardy: Justice of the Peace.' *Colby Library Quarterly* 13 (1977): 263-273.
- Sherman, G.W. 'Thomas Hardy and the Agricultural Labourer.' *Nineteenth-Century Fiction* 7 (1952): 111-118.
- Shumaker, Jeanette. 'Breaking with the Conventions: Victorian Confession Novels and *Tess of the D'Urbervilles*.' *English Literature in Transition* 37 (1994): 445-462.
- St. John Butler, Lance. 'Stability and Subversion: Thomas Hardy's Voices.' *Celebrating Thomas Hardy: Insights and Appreciations*. Ed. Charles P C. Pettit. Basingstoke: Macmillan, 1996. 39-53.
- Sumner, Rosemary. *Thomas Hardy: Psychological Novelist*. London: Macmillan, 1981.
- Thompson, Charlotte. 'Language and the Shape of Reality in *Tess of the D'Urbervilles*.' *Tess of the D'Urbervilles*. Ed. Peter Widdowson. New York: St. Martin's Press, 1993. 109-128.
- Tomalin, Claire. *Thomas Hardy: the Time-Torn Man*. London: Penguin, 2006.
- Vigar, Penelope. *The Novels of Thomas Hardy: Illusion and Reality*. London: The Athlone P, 1974.
- Weber, Carl. 'Chronology in Hardy's Novels.' *Publications of the Modern Language Association* 53 (1938): 314-320.
- Widdowson, Peter. Ed., *Tess of the d'Urbervilles*. New York: St. Martin's Press. 1993
- Williams, Melanie. "'Sensitive as Gossamer" - Law and Sexual Encounter in *Tess of the D'Urbervilles*.' *Thomas Hardy Journal* 17 (2001): 54-60.
- . '*Tess of the D'Urbervilles* and the Law of Provocation.' *Law and Literature*. Ed. Michael Freeman and Andrew Lewis. Oxford: Oxford UP, 1999. 167-190.
- Wilson, Keith. 'Hardy and the Hangman: the Dramatic Appeal of "The Three Strangers."' *English Literature in Transition* 24 (1981): 155-160.
- Wotton, George. *Thomas Hardy: Towards a Materialist Criticism*. Totowa: Barnes & Noble; Gill and Macmillan, 1985.

Secondary Sources

Newspapers

- 'Another Fire At Gravesend.' *The Times* 23 Sept. 1850, sec. C: 3.
- 'Bedford, Wednesday, March 10.' *The Times* 12 Mar. 1830, sec. C: 4.
- 'Crawford V. Crawford and Dilke.' *The Times* 17 Feb. 1886, sec. F: 7.
- 'Crawford V. Crawford and Dilke.' *The Times* 1 July 1886, sec. A: 13.
- 'Crown Court.' *The Times* 29 Feb. 1848, sec. F: 8.
- 'Disturbances At Lewes.' *The Times* 27 Nov. 1847, sec. E: 8.
- Guy, William A. 'The Plea of Insanity.' *The Times* 26 Jan. 1872, sec. B: 6.
- 'Mr. Justice Stephen on the Criminal Law.' *The Times* 27 Jan. 1883, sec. A: 10.
- 'The Corn Laws. Meeting of Agricultural Labourers in North Wilts.' *The Times* 7 Jan. 1846, sec. D: 5.
- 'The Crawford and Dilke Divorce Suit.' *The Times* 13 Feb. 1886, sec. A: 12.
- 'The Fifth of November.' *The Times* 6 Nov. 1850, sec. E: 6.
- 'The Fifth of November.' *The Times* 9 Nov. 1850, sec. F: 5.
- 'The Townley Case.' *The Times* 15 Jan. 1864, sec. D: 7.
- 'Western Circuit. Dorchester, Monday, March 16.' *The Times* 18 Mar. 1846, sec. B: 8.
- 'Western Circuit. Winchester, March 3.' *The Times* 6 Mar. 1869, sec. E: 4.

Other Sources

- Agamben, Giorgio. *State of Exception*. Trans. Kevin Attell. Chicago: University of Chicago P, 2005.
- Anstis, Ralph. *Four Personalities From the Forest of Dean: Sir John Wyntour, Catharina Bovey, Timothy Mountjoy, Sir Charles Dilke*. Coleford: Albion House, 1996.

- Arch, Joseph. *Joseph Arch: the Story of His Life Told by Himself*. London: Hutchinson & Co., 1898.
- Baron, Jane B. 'Interdisciplinary Legal Scholarship as Guilty Pleasure' in Michael Freeman and Andrew D.E. Lewis, ed., *Law and Literature* vol.2 Oxford: Oxford University Press, 1999, pp.21-45
- Baker, J.H. *Introduction to English Legal History* 4th ed. London: Butterworths, 2002.
- Bakhtin, Mikhail. *Rabelais and His World*. Trans. Hélène Iswolsky. Bloomington: Indiana UP, 1984.
- *The Dialogic Imagination*. Ed. Michael Holquist. Trans. Michael Holquist and Caryl Emerson. University of Texas Press: Austin, Tex.; London, 1981.
- Beattie, J M. *Crime and the Courts in England 1660-1800*. Oxford: Clarendon P, 1986.
- Bender, John. *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth Century England*. Chicago; London: University of Chicago P, 1987.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. Ed. J H. Burns and H.L. A. Hart. University of London: The Athlone P, 1970.
- Brooks, Peter, and Paul Gewirtz, Ed. *Law's Stories: Narrative and Rhetoric in the Law*. New Haven: Yale UP, 1996.
- Brown, Theo. 'The Stag-Hunt in Devon.' *Folklore* 63 (1952): 104-109.
- Burke, Edmund. *A Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful*. Ed. James T. Boulton. London: Routledge and Kegan Paul, 1958.
- Burke, Thomas. *London in My Time*. London: Rich and Cowan, 1934.
- Carlyle, Thomas. 'Chartism.' *English and Other Critical Essays*. London: J.M. Dent & Sons, 1964. 169-238.
- Checkland, E O., and S G. Checkland, Ed. *The Poor Law Report of 1834*. Harmondsworth: Penguin, 1974.
- Clark, G K. 'Hunger and Politics in 1842.' *The Journal of Modern History* 25 (1953): 355-374.
- Coles, Robert. 'Charles Dickens and the Law.' *The Virginia Quarterly Review* 59 (1983): 564-586.
- Collins, Philip. *Dickens and Crime*. 3rd ed. New York: St. Martin's Press, 1994.

- Connor, Steven. 'Transcripts, Law, Literature and the Trial of the Voice.' *New Formations* 23 (1990): 209-211.
- Cornish, W R., Jennifer Hart, A H. Manchester, and J Stevenson. *Crime and Law in Nineteenth-Century Britain*. Dublin: Irish UP, 1978.
- Culler, Kristen F. 'The Subgenre of Murder Ballads in the Street Literature of Britain.' (1997). 24 Aug. 2007 <<http://mh.cla.umn.edu/culler.html>>.
- Davis, Lennard J. *Factual Fictions: the Origins of the English Novel*. New York: Columbia UP, 1983.
- Dicey, Albert. *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*. London: Macmillan, 1905.
- Dickens, Charles. *Oliver Twist: or, the Parish Boy's Progress*. Ed. Philip Horne. London: Penguin, 2003.
- Draper, Jo. *Dorchester: an Illustrated History*. Wimborne: Dovecote P, 1992.
- . *Dorchester*. Chalford: Chalford, 1997.
- Elliott, Catherine, and Frances Quinn. *Criminal Law*. 6th ed. Harlow: Longman, 2006.
- Etherington, Jim. *Lewes Bonfire Night*. Seaford: S.B. Publications, 1993.
- Ferguson, Robert A. 'Untold Stories in Law.' *Law's Stories: Narrative and Rhetoric in Law*. Ed. Peter Brooks and Paul Gerwitz. New Haven; London: Yale UP, 1996. 84-98.
- Fielding, Henry. 'An Enquiry Into the Late Increase of Robbers.' *An Enquiry Into the Late Increase of Robbers and Related Writings*. Ed. Malvin R. Zirker. Oxford: Clarendon, 1988. 61-178.
- Fish, Stanley. 'Don't Know Much About the Middle Ages: Posner on Law and Literature.' *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*. Oxford: Clarendon, 1989. 294-311.
- Foster, Dennis A. *Confession and Complicity in Narrative*. Cambridge: Cambridge UP, 1987.
- Foucault, Michel. *Discipline and Punish: the Birth of the Prison*. Harmondsworth: Penguin, 1979.

- *I, Pierre Rivière, Having Slaughtered My Mother, My Sister and My Brother - : a Case of Parricide in the Nineteenth Century*. Trans. Frank Jellinek. New York: Pantheon, 1973.
- Freeman, Michael, and Andrew D E. Lewis, Ed. *Law and Literature*. Vol. 2. Oxford: Oxford UP, 1999.
- Gatrell, V. A. C. *The Hanging Tree: Execution and the English People 1770-1868*. Oxford: Oxford UP, 1994.
- George, M J. 'Skimmington Revisited.' *Journal of Men's Studies* 10 (2002): 111-127.
- Gifford, Robert. 'Guy Fawkes: Who Celebrated What? A Closer Look At 5th November in the Light of Captain Swing.' *Aspects of British Calendar Customs*. Ed. Theresa Buckland and Juliette Wood. Sheffield: Sheffield Academy for the Folklore Society, 1991. 147-153.
- Grass, Sean. *The Self in the Cell: Narrating the Victorian Prisoner*. New York & London: Routledge, 2003.
- Gray, Donald J. 'The Uses of Victorian Laughter.' *Victorian Studies: a Journal of the Humanities, Arts and Sciences* 10 (1966): 145-176.
- Greenslade, William. *Degeneration, Culture and the Novel, 1880-1940*. Cambridge: Cambridge UP, 1994.
- Greenwood, James. *The Seven Curses of London*. Oxford: Basil Blackwell Publisher Limited, 1981.
- Grossman, Jonathon H. *The Art of Alibi: English Law Courts and the Novel*. London: John Hopkins UP, 2002.
- Haggard, H. Rider. *Rural England*. Vol. 1. London: Longmans, Green and Co., 1906.
- *Rural England*. Vol. 2. London: Longmans, Green and Co., 1906.
- Hammond, J L., and Barbara Hammond. *The Village Labourer 1760-1832: a Study in the Government of England Before the Reform Bill*. Stroud: Nonsuch, 2005.
- Harlow, Barbara. 'Re-Imagining the Penitentiary.' *Novel: a Forum on Fiction* 23 (1990): 209-211.
- Hawthorne, Nathaniel. *The Blithedale Romance*. London: Penguin, 1983.
- Hearing, Terry. *Dorset Justice: a History of the Magistracy in Dorset*. Poole: Magistrates' Association - Dorset Branch, 1999.

- Hepburn, James, Ed. *A Book of Scattered Leaves: Poetry of Poverty in Broadside Ballads of Nineteenth-Century England*. Lewisburg, PA: Bucknell UP, 2000.
- Hindley, Charles, Ed. *Curiosities of Street Literature*. London: The Broadsheet King, 1966.
- 'Division Four. The "Gallows" Literature of the Streets.' *Curiosities of Street Literature*. London: The Broadsheet King, 1966.
- 'The Heroes of the Guillotine and Gallows, or, the Awful Adventures of Askern, Smith and Calcraft, the Three Rival Hangmen.' *Curiosities of Street Literature*. London: The Broadsheet King, 1966.
- Hirsch, Eric D. *The Aims of Interpretation*. Chicago: University of Chicago P, 1976.
- Hobsbawm, E J., and George Rudé. *Captain Swing*. London: Lawrence and Wishart, 1969.
- Hole, Christina. 'Winter Bonfires.' *Folklore* 71 (1960): 217-227.
- Hutchins, John. *The History and Antiquities of the County of Dorset*. Ed. W Shipp and J W. Hodson. 3rd ed. Vol. 1. Wakefield: EP, 1973.
- Hutton, Ronald. *The Stations of the Sun: a History of the Ritual Year in Britain*. Oxford: Oxford UP, 1997.
- Ingram, Martin. 'Ridings, Rough Music and Reform of Popular Culture in Early Modern England.' *Past and Present* 105 (1984): 79-113.
- Jenkins, Roy. *Dilke: a Victorian Tragedy*. 3rd ed. London: Papermac, 1996.
- Kalikoff, Beth. 'The Execution of Tess D'Urberville At Wintoncester.' Ed. William B. Thesing. *Executions and the British Experience From the Seventeenth to the Twentieth Century: a Collection of Essays*. Folkstone: McFarland, 1991. 111-121.
- *Murder and Moral Decay in Victorian Popular Literature*. Ann Arbor, Michigan: UMI Research, 1986.
- 'Victorian Sexual Confessions.' *Victorians Institute Journal* 18 (1990): 99-112.
- Keen, Suzanne. *Victorian Renovations of the Novel: Narrative Annexes and the Boundaries of Representation*. Cambridge: Cambridge UP, 1998.
- Kerr, Barbara. *Bound to the Soil: a Social History of Dorset, 1750-1918*. London: Baker, 1968.

- Kettle, Arnold. *An Introduction to the English Novel*. 2nd ed. Vol. 2. London: Hutchinson University Library, 1974.
- Langbein, John H. 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: the Appearance of Solicitors.' *Cambridge Law Journal* 58 (1999): 314-365.
- Laqueur, Thomas Walter. 'Crowds, Carnival and the State in English Executions, 1604-1868.' *The First Modern Society: Essays in English History in Honour of Lawrence Stone*. Cambridge: Cambridge UP, 1989. 305-355.
- Ledger, Sally. 'From Queen Caroline to Lady Dedlock: Dickens and the Popular Radical Imagination.' *Victorian Literature and Culture* 32 (2004): 575-600.
- Leigh, E. Chandos, and Lewis W. Cave. *Crown Cases Reserved for Consideration and Decided by the Judges of England*. London: Stevens and Sons, 1866.
- Lemmings, David. 'Criminal Trial Procedure in Eighteenth-Century England: the Impact of Lawyers.' *The Journal of Legal History* 26 (2005): 63-70.
- Loveless, George. *The Victims of Whiggery: Being a Statement of the Persecutions Experienced by the Dorchester Labourers, Their Trial, Banishment, &C., Also Reflections Upon the Present System of Transportation with an Account of Van Dieman's Land, Its Customs, Laws, Climate, Produce and Inhabitants*. 2nd ed. London: Communist Party of Great Britain, 1969.
- MacKinnon, Catherine. *Women's Lives, Men's Laws*. Cambridge, Mass: Belknap P of Harvard UP, 2005.
- Malcolmson, Robert W. *Popular Recreations in English Society 1700-1850*. Cambridge: Cambridge UP, 1973.
- Mason, Michael. *The Making of Victorian Sexual Attitudes*. Oxford: Oxford UP, 1994.
- Maxted, Ian. *A History of the Book in Devon. Popular Literature in the Eighteenth Century*. 17 Aug. 2007 <<http://www.devon.gov.uk/localstudies/114905/1.html>>.
- Mayhew, Henry. *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*. Vol. 1. New York: Dover, 1968.
- . *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*. Vol. 4. New York: Dover, 1968.

- *London Labour and the London Poor: the Classical Study of the Culture of Poverty and the Criminal Classes in the Nineteenth Century*. Vol. 3. New York: Dover, 1968.
- McCord, Norman. *The Anti-Corn Law League 1838-1846*. 2nd ed. London: Unwin University Books, 1968.
- McMaster, R D. *Trollope and the Law*. London: Macmillan, 1986.
- Miller, D A. *The Novel and the Police*. Berkeley; Los Angeles: University of California P, 1988. 1-232.
- Mill, John Stuart, and Harriet Taylor Mill. 'The Enfranchisement of Women.' *Essays on Equality, Law and Education*. Ed. John M. Robson. London: Routledge, 1984. 393-415.
- Morris, Keith, and Ray Hearne. *Ebenezer Elliott: Corn Law Rhymer and Poet of the Poor*. Rotherwood: Rotherwood P, 2002.
- Moule, Henry. *Old Dorset: Chapters in the History of the County*. London: Cassell and Company Limited, 1893.
- *Paupers, Criminals and Cholera At Dorchester in 1854*. Mount Durand, St. Peter Port, Guernsey: The Toucan P, 1968.
- Murch, Alma Elizabeth. *The Development of the Detective Novel*. London: Peter Owen, 1958.
- Nicholson, Renton. *Rogue's Progress: an Autobiography of 'Lord Chief Baron' Nicholson*. Ed. John L. Bradley. London: Longmans, Green and Co., 1966.
- O'Brien, Ellen. "'The Most Beautiful Murder': the Transgressive Aesthetics of Murder in Victorian Street Ballads". *Victorian Literature and Culture* 28 (2000): 15-37.
- "'Every Man Who is Hanged Leaves a Poem': Criminal Poets in Victorian Street Ballads." *Victorian Poetry* 39 (2001): 319-339.
- Osborne, Bertram. *Justices of the Peace, 1361-1848: a History of the Justices of the Peace for the Counties of England*. Dorset: The Sedgehill P, 1960.
- Parkin, John. 'Rough Justice in Rabelais.' *Rabelais in Glasgow : Proceedings of the Colloquium Held At the University of Glasgow in December 1983*. Ed. James A. Coleman and Christine Scollen-Jimack. Glasgow: University of Glasgow. Department of French, 1984. 125-143.
- Paroissien, David, Ed. *Selected Letters of Charles Dickens*. London: Macmillan, 1985.

- Petch, Simon. 'Law, Literature and Victorian Studies.' *Victorian Literature and Culture* 35 (2007): 361-384.
- Petch, Simon, 'The Sovereign Self: Identity and Responsibility in Victorian England.' *Law and Literature Vol.2*. Michael Freeman, and Andrew D. E. Lewis, Ed. Oxford: Oxford UP, 1999. 397-415.
- Pettit, Alexander. 'Sympathetic Criminality in the Mid-Victorian Novel.' *Dickens Studies Annual* 19 (1990): 281-300.
- Pettit, Clare. *Patent Inventions: Intellectual Property and the Victorian Novel*. Oxford: Oxford UP, 2004.
- Philips, David, and Robert D. Storch. *Policing Provincial England 1829-1856: the Politics of Reform*. London: Leicester UP, 1999.
- Pickering, Paul A., and Alex Tyrrell. *The People's Bread: a History of the Anti-Corn Law League*. London: Leicester UP, 2000.
- Pinney, Lady Hester. *Thomas Hardy and the Birdsmoorgate Murder 1856*. Beaminster: The Toucan P, 1966.
- Poor Law Commission. *The Poor Law Report of 1834*. Ed. E.O.A. Checkland and S.G. Checkland. Harmondsworth: Penguin, 1974.
- Popular Literature in Eighteenth and Nineteenth Century Britain [Microform]: the Robert White Collection of Chapbooks From the University Library, Newcastle Upon Tyne*. Reading: Research Publications. Reel 17.
- Posner, Richard. 'Law and Literature: a Relation Reargued.' *Virginia Law Review* 72(8), 1986, 1351-1392
- Pritchard, James. *The Different Forms of Insanity in Relation to Jurisprudence*. London, 1842.
- Pykett, Lyn. *The "Improper" Feminine: the Women's Sensation Novel and the New Woman Writing*. London: Routledge, 1992.
- . *The Sensation Novel From the Woman in White to the Moonstone*. Plymouth: Northcote House in Association with the British Council, 1994.
- Rackow, Felix. 'The Right to Counsel: English and American Precedents.' *The William and Mary Quarterly* 11 (1954): 3-27.

- Radzinowicz, Leon. *A History of English Criminal Law and Its Administration From 1750*. Vol. 3. London: Stevens and Son, 1956.
- . *A History of English Criminal Law and Its Administration From 1750*. Vol. 4. London: Stevens & Sons, 1968.
- . *A History of English Criminal Law and Its Administration From 1750*. Vol. 5. London: Stevens & Sons, 1986.
- Ray, Isaac. *A Treatise on the Medical Jurisprudence of Insanity*. London, 1840.
- Reid, Douglas A. 'Interpreting the Festival Calendar: Wakes and Fairs as Carnivals.' *Popular Culture and Custom in Nineteenth-Century England*. Ed. Robert Storch. London: Croom Helm, 1982. 125-153.
- Ricoeur, Paul. *Time and Narrative* Vol. 1, translated by Kathleen Blamey, Kathleen McLaughlin and David Pellauer. University of Chicago Press, 1984.
- Rignall, John, Ed. *Oxford Reader's Companion to George Eliot*. Oxford: Oxford UP, 2000.
- Rodensky, Lisa. *The Crime in Mind: Criminal Responsibility and the Victorian Novel*. Oxford: Oxford UP, 2003.
- Rudé, George. *Criminal and Victim: Crime and Society in Early Nineteenth-Century England*. Oxford: Clarendon, 1985.
- . 'Study of Popular Disturbances in the "Pre-Industrial Age."' *Historical Studies. Australia and New Zealand* 10 (1963): 457-469.
- Sales, Roger. *English Literature in History 1780-1830*. New York: St Martin's Press, 1983.
- Schlicke, Paul, Ed. *Oxford Reader's Companion to Dickens*. Oxford: Oxford UP, 1999.
- Schopenhauer, Arthur, *The World as Will and Representation*. Vol. 1. Ed. E F J. Payne. New York: Dover Publications, 1969.
- . *Studies in Pessimism: a Series of Essays*. Trans. Thomas Bailey Saunders. London: Swan Sonnenschein & Co., 1998.
- Schor, Hilary. 'Show-Trials: Character, Conviction and the Law in Victorian Fiction.' *Cardozo Studies in Law and Literature* 11 (1999): 179-195.
- Schramm, Jan-Melissa. *Testimony and Advocacy in Victorian Law, Literature and Theology*. Cambridge: Cambridge UP, 2000.

- Scott, James C. *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven: Yale UP, 1990.
- Sharpe, J. A. "“Last Dying Speeches”: Religion, Ideology and Public Execution in Seventeenth-Century England.’ *Past and Present* 107 (1985): 144-167.
- Skyrme, Sir Thomas. *History of the Justices of the Peace*. 2nd ed. Chichester: Barry Rose and the Justice of the Peace, 1994.
- Snell, K.D.M. *Annals of the Labouring Poor: Social Change and Agrarian England, 1660-1900*. Cambridge: Cambridge UP, 1985.
- Squires, Michael. *The Pastoral Novel: Studies in George Eliot, Thomas Hardy, and D. H. Lawrence*. Charlottesville: University P of Virginia, 1974.
- Stallybrass, Peter, and Allon White. *The Politics and Poetics of Transgression*. London: Methuen, 1986.
- Stavreva, Kirilka. ‘Scaffold Unto Prints: Executing the Insubordinate Wife in the Ballad Trade in Early Modern England.’ *Journal of Popular Culture* 31 (1997): 177-188.
- Stephen, Sir James Fitzjames. *History of the Criminal Law in England*. Vol. 1. London: Routledge/Thoemmes P, 1996.
- *History of the Criminal Law in England*. Vol. 2. London: Routledge/Thoemmes P, 1996.
- ‘Mr Dickens as a Politician.’ *Saturday Review* 3 (1857): 8-9.
- ‘On the Policy of Maintaining the Limits At Present Imposed by Law on the Criminal Responsibility of Madmen.’ *Papers Read to the Juridical Society 1855-1858*. London, 1855.
- Stone, Samuel. *The Justices’ Manual, or, Guide to the Ordinary Duties of a Justice of the Peace: with an Appendix of Forms, and Table of Punishments*. 11th ed. London: British Law: Administration of Justice, 1865.
- *The Justices’ Manual, or, Guide to the Ordinary Duties of a Justice of the Peace: with Table of Cases, Appendix of Forms, and Table of Punishments*. 23rd ed. London: British Law: Administration of Justice, 1885.
- Storch, Robert. ““Please to Remember the Fifth of November”: Conflict, Solidarity and Public Order in Southern England 1815-1900.’ *Popular Culture and Custom in Nineteenth Century England*. London: Croom Helm, 1982. 71-99.

- Terry, R C. *Oxford Reader's Companion to Trollope*. Oxford: Oxford UP, 1999.
- The Holy Bible Containing the Old and New Testaments*. 1 Sam. 22.2-22.3. Oxford: Oxford UP, 2003.
- The Holy Bible Containing the Old and New Testaments*. Eccles. 1.2-1.3. Oxford: Oxford UP, 2003.
- Thomas, Donald. *The Victorian Underworld*. London: John Murray, 2003.
- Thompson, E P. 'Rough Music Reconsidered.' *Folklore* 103 (1992): 3-26.
- Thompson, Dorothy. *The Chartists*. New York: Pantheon, 1984.
- Tillotson, Kathleen. Ed., *The Letters of Charles Dickens*, vol.4 1844-1846. Oxford: Clarendon, 1977
- Trevelyan, George M. *The Life of John Bright*. London: Routledge, 1993.
- Trodd, Anthea. *Domestic Crime in the Victorian Novel*. Basingstoke: Macmillan, 1989.
- Udal, John S. *Dorsetshire Folk-Lore*. 2nd ed. St Peter Port: Toucan P, 1970.
- Underdown, David. *Fire From Heaven: Life in an English Town in the Seventeenth Century*. London: Pimlico, 2003.
- *Revel, Riot and Rebellion: Popular Politics and Culture in England 1603-1660*. Oxford: Oxford UP, 1987.
- Walker, Nigel. *Crime and Insanity in England: the Historical Perspective*. Vol. 1. Edinburgh: Edinburgh UP, 1968.
- Waller, John C. "'The Illusion of an Explanation': the Concept of Hereditary Disease, 1770-1870." *Journal of the History of Medicine and Allied Sciences* 57 (2002): 152-154.
- Watt, Ian. *The Rise of the Novel: Studies in Defoe, Richardson and Fielding*. London: The Hogarth P, 1987.
- Webster, John. *The White Devil*. Ed. John R. Brown. London: Methuen & Co, 1996.
- Weisberg, Richard, and Jean-Pierre Barricelli. 'Literature and Law.' *Interrelations of Literature*. Ed. Jean-Pierre Barricelli and Joseph Gibaldi. New York: The Modern Language Association of America, 1982. 150-175.

- Weisberg, Richard H. *The Failure of the Word: the Protagonist as Lawyer in Modern Fiction*. New Haven; London: Yale UP, 1984.
- Welsh, Alexander. *Strong Representations: Narrative and Circumstantial Evidence in England*. Baltimore; London: John Hopkins UP, 1992.
- Wilde, Oscar. 'The Ballad of Reading Gaol.' *Complete Stories, Plays and Poems of Oscar Wilde*. London: Michael O'Mara Books Limited, 1990. 816-832.
- Williams, Raymond. *Modern Tragedy*. Stanford: Stanford University Press, 1966.
- 'Forms of English Fiction in 1848.' *1848: the Sociology of Literature: Proceedings of the Essex Conference on the Sociology of Literature*, July 1977. Ed. Francis Barker. Essex: University of Essex, 1978. 277-290.
- *The Country and the City*. London: Chatto and Windus, 1973.
- Wilson, Luke. 'The White Devil and the Law.' *Early Modern English Drama: a Critical Companion*. Ed. Garrett A. Sullivan, Patrick Cheney, and Andrew Hadfield. New York; Oxford: Oxford UP, 2006. 225-236.
- Wiltenberg, Joy. 'Madness and Society in the Street Ballads of Early Modern England.' *Journal of Popular Culture* 21 (2000): 101-127.
- Winslow, L F. *The Plea of Insanity in Criminal Cases*. London, 1840.
- Winter, James. 'The Cave of Adullam and Parliamentary Reform.' *The English Historical Review* 81 (1966): 38-55.