

## NAVIGATING “THOSE TERRIBLE MESHES OF THE LAW”: LEGAL REALISM IN ANTHONY TROLLOPE’S *ORLEY FARM* AND *THE EUSTACE DIAMONDS*

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And then those terrible meshes of the Law! How is a fictionist, in these excited days, to create the needed biting interest without legal difficulties; and how again is he to steer his little bark clear of so many rocks,—when the rocks and the shoals have been purposely arranged to make the taking of a pilot on board a necessity? As to those law meshes, a benevolent pilot will, indeed, now and again give a poor fictionist a helping hand,—not used, however, generally, with much discretion.

—Anthony Trollope, *Phineas Finn*

It is generally accepted that this narrative aside in chapter twenty-nine of Anthony Trollope’s *Phineas Finn* (1869) is an oblique reference to the author’s prior and not entirely successful attempt to navigate “those terrible meshes of the Law” in *Orley Farm* (1860–1861).<sup>1</sup> Contemporary reviewers, many of them lawyers, devoted considerable attention to the procedural and ideological inaccuracies of Trollope’s representation of the law in the earlier novel; a number of early twentieth-century critics, represented most noticeably by Sir Francis Newbolt, expanded on the original charges to such an extent that the vast majority of subsequent readers have felt compelled to at least acknowledge the issue if only to decline to pursue it themselves.<sup>2</sup> Curiously, contemporary reviewers devoted a great deal less energy to exposing the inaccuracies of Trollope’s later, and in many respects very similar, fictionalization of the law in *The Eustace Diamonds* (1873). Given their established eagerness to find fault, this later muted response is surely tantamount to approval, and a testament to Trollope’s friend and fellow Garrick Club member, Charles George Meriwether, QC, the “benevolent pilot” recruited to write the single substantive legal opinion in the text. That Trollope took great pains not to repeat the legal mistakes of *Orley Farm* has been noted by later Trollopian, who nevertheless tend not to dwell overlong on the subject, or on the

relationship between the two novels' representations of the law.<sup>3</sup> Such a relative lack of critical attention prompts the underlying question of why, in *The Eustace Diamonds*, Trollope felt the need to avoid his earlier inaccuracies from *Orley Farm* at all.

This essay offers an interdisciplinary explanation for Trollope's approach to representing the law in both novels that draws upon the theories of early-twentieth-century sociologist Max Weber, law and literature studies, and Victorian novel criticism. I begin with the overt attack on the law in *Orley Farm*, as well as reviewers' exposure of the text's many inaccuracies. Although they were successful in blunting the force of Trollope's critique, I argue that these same reviewers did not address his subtler and potentially more damaging juxtaposition of the ethics of the realist novel and the commercialism of criminal advocacy. I then consider Trollope's representation of the law in *The Eustace Diamonds*, a novel in which he meticulously avoids the kinds of factual errors for which he had been attacked twelve years earlier, even as he maintains the ethical superiority of realist fiction to legal maneuvering and other romantic forms of representation. Ultimately, I argue both that Trollope's concern with accuracy can be traced to his vigorous competition on behalf of writers to rival lawyers for professional stature and a finite amount of charismatic authority in Victorian England, and that his competitive strategies warrant these novels in particular and Trollope's novels in general a more prominent place than they currently occupy in law and literature studies.<sup>4</sup>

Although Trollope's novels are replete with synecdochal figurations of the law—R. D. McMaster notes over 100 lawyers, twelve trials, and a consistent fascination with inheritance and conveyancing—*Orley Farm* and *The Eustace Diamonds* tell remarkably similar legal stories, and thereby appear to invite comparative analysis. Both novels turn on a will and a lie: *Orley Farm* revolves around the open secret that, twenty years earlier, Lady Mason forged a codicil to her deceased husband's will; in *The Eustace Diamonds*, the will is genuine, but the widow lies in order to circumvent its intent. Both female protagonists fraudulently impose their wills on their spouses' last wills in the name of their underage, and therefore legally will-less, children. Lady Mason is arguably more sincere in her intentions than Lady Eustace, who nevertheless behaves in her novel's present precisely as Joseph Mason imagines his mother-in-law to have behaved in their novel's past. Both plots culminate in a trial, the first for perjury with strong implications of theft in the background, the second for theft with the possibility of prosecution for perjury neatly sidestepped by the courts.

In addition, both narrators devote meticulous attention to the rituals of professionalization that regulate the lives of lawyers and identify them as members of the elite public. Finally, both conclusions mete out a version of justice to their central characters that has remained unavailable in, and indeed immaterial to, the workings of the texts' professional lawyers.

#### I. TROLLOPE'S OVERT ATTACK ON THE LAW IN *ORLEY FARM*

The substance of Trollope's overt attack on the law in *Orley Farm* is stated in its earliest and simplest form by Lucius Mason, at that time still a student in Germany. Rebuffing his mother's efforts to establish him in the legal profession with the support of Mr. Furnival, the novel's principal barrister, Lucius declares, "I have an idea . . . that lawyers are all liars."<sup>5</sup> Although refined and expanded upon as the story progresses, the young Lucius Mason's initial perception of a rupture between the law and the truth is consistently and variously represented throughout the novel. Speaking to his friend Augustus Stavely, Felix Graham, generally identified as Trollope's ideal of a barrister, laments, "from our love of precedent and ceremony and old usages, we have retained a system which contains many of the barbarities of the feudal times, and also many of its lies" (*OF*, 18:158), and concludes, "Let every lawyer go into court with a mind resolved to make conspicuous to the light of day that which seems to him to be the truth. A lawyer who does not do that—who does the reverse of that, has in my mind undertaken work which is unfit for a gentleman and impossible for an honest man" (*OF*, 18:159). Graham's lack of professional success attests to the unreality of his vision, as do the narrator's comments on Sir Peregrine Orme's similar naïveté in his speech to his angelic daughter-in-law: "My love, what is the purport of these courts of law if it be not to discover the truth, and make it plain to the light of day?" Poor Sir Peregrine! His innocence in this respect was perhaps beautiful, but it was very simple" (*OF*, 56:510).

Rather than being devoted to the revelation of truth, the lawyers in *Orley Farm* devote themselves to the defense of clients. As the narrator observes in his summary dismissal of the reformative power of the Birmingham legal congress, "no amount of eloquence will make an English lawyer think that loyalty to truth should come before loyalty to his client" (*OF*, 17:147). From the very beginning of the lawyer-client relationship, this loyalty places uncomfortable limits on the possibility of frank interpersonal communication: "In the ordinary intercourse of the world when one man seeks advice from another, he who is consulted

demands in the first place that he shall be put in possession of all the circumstances of the case. . . . But in matters of law it is different. If I, having committed a crime, were to confess my criminality to the gentleman engaged to defend me, might he not be called upon to say: "Then, O my friend, confess it also to the judge; and so let justice be done. Ruat coelum, and the rest of it?" But who would pay a lawyer for counsel such as that?" (*OF*, 12:104).<sup>6</sup> These same strictures apply to consultations among lawyers themselves:

[Felix Graham speaking] "I suppose there can really be no doubt as to her innocence?"

What was Mr. Furnival to say? Mr. Chaffanbrass and Mr. Aram had asked no such question. Mr. Round had asked no such question when he had discussed the whole matter confidentially with him. It was the sort of question never put to professional men, and one which Felix Graham should not have asked. . . .

"No; I have no doubt; none in the least," said he. And thus the lie, which he had been trying to avoid, was at last told. (*OF*, 62:566–67)

Even had Mr. Furnival shared with Felix Graham all of his suspicions, however, Graham would have been compelled, "by precedent and ceremony and old usages"—or, in a phrase that surely would have rankled Trollope, by professional ethics—to continue to defend Lady Mason to the utmost of his abilities. Judge Staveley has already told him as much, and Mr. Chaffanbrass upbraids him at the end of Lady Mason's trial for failing to do so.<sup>7</sup>

In no way is the fundamental injustice of lawyers' misplaced loyalties more apparent for Trollope than in the relatively recent procedural innovation of the cross-examination of witnesses. This process became possible with the passage of the Prisoners' Counsel Act of 1836, and by the late 1850s was a regular feature of criminal trials.<sup>8</sup> Certainly cross-examination figures prominently in Lady Mason's own trial—of which more in a moment—but well before the novel enters the courtroom, Trollope makes clear his disdain for what the narrator alternatively labels "browbeating of witnesses" and "breaking down and crushing a witness" (*OF*, 10:86, 38:344). As early as chapter seven, the otherwise unsympathetic solicitor Samuel Dockwrath expresses to Joseph Mason his preference for the "little facts" of documents over the direct testimony of witnesses, because a "clever counsel can turn a witness pretty nearly any way he likes" (*OF*, 7:59).<sup>9</sup> A later exchange between Felix Graham and Judge Staveley adds moral and professional authority to Dockwrath's account of defense counsel:

[Judge Staveley speaking] “Mr. Chaffanbrass no doubt is a very clever man, and it may be wise in such a case as this to have the services of a barrister who is perhaps unequalled in his powers of cross-examining a witness.”

“Does his power consist in making a witness speak the truth, or in making him conceal it?”

“Perhaps in both.” (*OF*, 48:432)

In light of this conversation, it is unsurprising that the professional lapse that Chaffanbrass notes in Graham’s conduct during the trial is his insufficiently vigorous cross-examination of the elderly Mr. Torrington.

Graham’s failure, in Chaffanbrass’s opinion, is fundamentally a rhetorical naiveté about the productively ambiguous truth-value of legal language; for Trollope, however, this very linguistic slippage represents a significant component of his case against the professional authority of the law. Glynn-Ellen Fischelli devotes considerable attention to this portion of Trollope’s critique, arguing that “*Orley Farm* maintains a sustained focus on the legal arena that gives Trollope the perfect outlet for examining issues of rhetoric, both in the public sphere of truth-telling before the Bar, and in the often related private drama of drawing-room confrontations.”<sup>10</sup> Her meticulous connection between the languages of law and romance in the novel confirm the centrality of Graham to the novel’s ethics of truth-telling.<sup>11</sup> At the same time, focusing exclusively on the language of the law as a species of rhetoric fundamentally undifferentiated from other forms of address risks obscuring the place of this legal speech in Trollope’s larger institutional critique of the law. As Trollope represents it, the law is a ritual system of practices, traditions, and forms of etiquette of which language forms only a part of a much larger whole.<sup>12</sup>

Trollope implicitly asserts the authority of his overt critique of the law through his meticulous reproduction of this broader system; according to this logic, his accurate representation of professional distinctions, codes of conduct, courtroom rituals and other legal details makes true his account of legal untruthfulness. Trollope is therefore careful to note the hierarchical divisions between the upper and lower branches of the profession; within the upper branch, between common law barristers like Furnival and criminal law, or Old Bailey, barristers like Chaffanbrass, described as “devoting himself to the manumission of murderers, or the security of the swindling world in general” (*OF*, 10:86); within the lower branch, between London firms like Round and Crook and country attorneys like Dockwraith; and even within

London firms, between respectable houses like Sir Peregrine's Slow and Bideawhile and less reputable criminal specialists like Solomon Aram. Trollope notes the status of barristers' clerks, and, through the semi-retirement of the elder Round, "now considered by some to be not quite sharp enough for the practice of the present day" (*OF*, 16:140), the generational changes in Victorian legal practice.<sup>13</sup>

Trollope is equally meticulous in matters of professional conduct and costume. He reminds his readers that barristers do not meet with clients, especially female clients, directly in their chambers, nor do they meet with the solicitors and attorneys who technically request their services outside of those chambers. He is acutely aware that these same solicitors and attorneys, who do meet with clients directly, do not initiate legal proceedings, even if they discover grounds for doing so, without first being directed to act by their clients.<sup>14</sup> Finally, he directs the reader's attention to a source of conflict in the period—the considerable expense of employing multiple lawyers for a single trial—by reminding her that in a case such as Lady Mason's, in which the charges hang upon the testimony of the two principal witnesses, professional "etiquette required that the cross-examination of these two most important witnesses should not be left in the hands of the same barrister" (*OF*, 62:563). Fully appared for such questioning in his "forensic habiliments," a barrister like Furnival appears considerably more impressive than, and derives an authoritative advantage over, witnesses and even judges, than he would in his "dress as a simple citizen" (*OF*, 10:87). Indeed, Trollope expresses considerable sympathy for witnesses when presented with the combined accoutrements of power of judges' ermines, canopies, and large armchairs; attorney's big tables and tipstaves; and barristers' wigs, gowns, and opportunities for forensic eloquence.<sup>15</sup> Each of these details performs a double duty in the novel by offering a point of entry for Trollope's critique of the law and demonstrating his evidentiary authority to make this critique in the first place.

It is in the lengthy account of Lady Mason's trial, however, that Trollope seeks to both sum up his critique of the law and demonstrate the force of that critique through the multiplication of realistic detail. The account of the indictment alone occupies almost half of chapter 53, and includes minute descriptions of the legal motions of the attorneys, the seating arrangements of the principal participants, the behavior of Lucius and Lady Mason, and the appearance and conduct of Aram. By this point in the novel, the reader has already been privy to Lady Mason's tearful confession of her guilt, and so Trollope's critique of the

indictment process as just another insiders' event put on by and for the lawyers themselves takes on greater force: "The chief performers on the present occasion were Round and Aram, and a stranger to such proceedings would have said that they were acting in concert" (*OF*, 53:479). This idea that opposing counsel are colluding with one another is one that Dockwrath, albeit disingenuously, has already raised, but it is crucially focalized here through a fictionalized reader untainted by excessive exposure to legal proceedings.

Once the trial actually begins the narrator continues to appeal to and identify with this legal outsider perspective, asserting his right, as one "not bound by the necessities under which the court laboured," to offer only a cursory survey of the "preliminaries" (*OF*, 68:614). Preserving his claim to insider knowledge and thereby his realistic grasp of the process, however, he goes on to list the preliminaries as the arraignment, the plea, and the jury selection. Each day of the three-day trial then receives its own chapter or chapters, and each chapter directs the reader's attention to one or more aspects of the law deserving moral censure. Day one, detailed in chapter 68, features the cross-examination of Dockwrath by Chaffanbrass, whose exposure of the attorney's personal stake in the case not only undermines his character but also reveals the ways in which the Victorian legal system—in which private parties, not state district attorneys, charge defendants with crimes—subverts justice by making the courts subject to personal vindictiveness and greed.

Day two, which occupies chapters 71 and 72, shows the degree to which truth can be effaced by legal rhetoric. The cross-examinations of the two principal witnesses by Furnival and Chaffanbrass demonstrate the ways in which honest testimony can, in the first place be made to look like feeble-minded idiocy, and in the second place like suborned obstinacy. "All of this," the narrator confides, "disturbed Felix Graham not a little. He," and through him presumably the reader, "perceived that each of those two witnesses had made a great effort to speak the truth;—an honest, painful effort to speak the truth, and in no way to go beyond it" (*OF*, 72:654).<sup>16</sup> If the witnesses had endeavored, however unsuccessfully, to speak the truth, Furnival sets no such limits on his final address to the jury. His address occupies several pages, is eloquent enough to crush the hopes of Dockwrath and Joseph Mason, and nearly causes Furnival himself to forget his own opinion of his client's guilt: "All his old fire came back upon him, and before he had done he had almost brought himself again to believe Lady Mason to be that victim of persecution as which he did not hesitate to represent

her to the jury” (*OF*, 72:655). Even worse, according to the narrator, than the power of legal rhetoric to obscure the truth, is that fact that, “when the legal world knew—as the legal world soon did know—that all this had been so, the legal world found no fault with Mr. Furnival, conceiving that he had done his duty by his client in a manner becoming an English barrister and an English gentleman” (*OF*, 72:661). The professional reaction to Furnival’s eloquence provides Trollope with his most pointed example of the gulf between law and truth.

The account of day three in chapter 75 is divided from day two by two intervening chapters in which Mrs. Orme reveals Lady Mason’s guilt to her son and Felix Graham proposes marriage to and is accepted by Madeline Staveley. The falseness of Furnival’s rhetoric is thus counterbalanced by the demolition of Lucius’s blind faith and the sentimental gratification of young love for the novel’s legal conscience. As the plot descends back into the moral quagmire of the trial’s third day, even the judge is not immune to the narrator’s criticism. His charge to the jury, in which he summarizes the relevant evidence, remains accurate and displays “infinite talent” and “perspicuity” despite the effects of cross-examination and Furnival’s closing address, but is “remarkable” not for its truth, but for its tendency “to regard the witnesses as a dissecting surgeon may be supposed to regard the subjects on which he operates,” rather than as “live men and women who were themselves as much entitled to justice at his hands as either the prosecutor in this matter or she who was being prosecuted; who, indeed, if anything, were better entitled” (*OF*, 75:686–87). It is noteworthy that in this indictment of the law’s impersonal cruelty to witnesses, Trollope compares the judge not to a physician—the highest class of medical practitioner just as a barrister is the highest class of legal practitioner—but to a surgeon, a doctor whose status as a gentleman was suspect due to his physical, even visceral, contact with patients, as well as to the lingering English distaste for medical dissection, a practice routinely carried out on the bodies of condemned criminals. The final verdict of not guilty, presumably the most important moment in a criminal trial, is rendered swiftly in dim light so as not unduly to interrupt the judge’s dinner, thereby confirming the novel’s overt attack on the law as a false game put on by, for, and about lawyers without any serious care for the principle of justice.<sup>17</sup>

In his meticulous attention to perceptible detail during the trial and throughout the novel, Trollope also hints at the less perspicuous, but nevertheless powerful, bases of authority that allow the legal game to continue. This underlying institutional appeal of the law in *Orley Farm*



can be productively explained by the early-twentieth-century sociologist Max Weber's theories of charisma and the legitimation of institutional authority.<sup>18</sup> In his *On Charisma and Institution Building*, Weber traces the original of all legitimate public authority to individual leaders' possession of "charisma," loosely defined as the power to compel others through sheer force of will, personality, or elite position to reorder community structures and symbolic systems to conform to the charismatic leader's mission. As a result of its radically individualized focus and lack of tradition or logic, "pure" charisma tends to be ephemeral and unpredictable and requires constant "proving" by the leader. To lend stability to his position, the charismatic leader, according to Weber, promulgates discipline and finally bureaucracy to preserve and extend his power. This routinization of power culminates in the creation of rituals capable of transferring charisma from one bearer to another, thereby establishing an institutional "charisma of office."<sup>19</sup> Weber is careful to note that this process of institutionalization does not entirely eliminate the need of those in positions of power to prove their worth as leaders, but it does greatly reduce the frequency of the need to do so while also creating a symbolic and institutional context favorable to their success. Failure remains possible, however, and should those in positions of charismatic leadership fail to prove themselves, a prestige vacuum results that can be filled by other individuals or groups capable of showing their own charismatic potential.

Among those granted power on the basis of charisma Weber includes judges, and Trollope's notation of judicial costume during the trial shows that he was aware of this important facet of the routinization of legal charisma.<sup>20</sup> In Furnival's final address, Trollope also dramatizes an example of a charismatic leader "proving" himself, convincing the jury and almost himself that his mission to exonerate Lady Mason is just. Weber writes,

The holder of charisma seizes the task that is adequate for him and demands obedience and a following by virtue of his mission. His success determines whether he finds them. His charismatic claim breaks down if his mission is not recognized by those to whom he feels he has been sent. If they recognize him, he is their master—so long as he knows how to maintain recognition through "proving" himself. But he does not derive his "right" from their will, in the manner of an election. Rather, the reverse holds: it is the *duty* of those to whom he addresses his mission to recognize him as their charismatically qualified leader.<sup>21</sup>

Dressed in his robe and wig, summoning his “old fire” (*OF*, 71:644), transfixing witnesses and jury members alike with his eye, and summoning his “own powers of forensic eloquence” (*OF*, 72:655), Furnival is demanding obedience in precisely the manner described by Weber.<sup>22</sup> He even goes so far as to hope that the exculpatory verdict he fully expects “will be accompanied by some expression . . . which may show the world at large how great has been the wickedness displayed in the accusation” (*OF*, 72:660). His success in defiance of the truth is precisely why he, and the judicial system he represents, no longer deserves to exercise legitimate authority, according to Trollope, who uses the multiplication of realistic detail to indict the law for its misuse of its own ritualized, bureaucratic power.

Contemporary reviewers, many of whom were also lawyers, recognized that in order to diffuse Trollope’s critique, they would have to show that his supposedly realistic details themselves lacked the truth-value claimed for them. The article-length review of *Orley Farm* in the *National Review*, for example, pronounced the cross-examinations featured so prominently during the second day of the trial “so ludicrously unlike real life, that it is evident Mr. Trollope’s visits to a court of justice have been few and far between, and have left on his mind only a vague and indistinct impression, which nothing but the haze in which it is involved preserves from instant exposure.”<sup>23</sup> The reviewer for *The Home and Foreign Review* was similarly hostile towards Trollope’s fictionalized cross-examinations, as well as his portrait of a morally compromised Furnival. He also took Trollope to task for misapprehending the underlying moral obligation of defense counsel, the innocence or guilt of whose client is secondary to the advocate’s belief in the process itself: “In a criminal trial there is always a battle to be fought in which any man many believe,—the taking care that no accused person shall be convicted without ample sufficient proof, that the jury shall not come to a decision without knowing all that can be said for him as well as against him.”<sup>24</sup> Trollope’s critique of defense advocacy was, by the 1860s, something of a cliché, and the reviewers for both *The Saturday Review* and *The Times* were quick to assert that the inclusion of such material was detrimental to Trollope’s reputation, and to the quality of the novel.<sup>25</sup> The most sustained response to Trollope’s overt attack on the law appeared at the end of an otherwise positive, if restrained, omnibus review in the *North British Review* of nine of Trollope’s early novels.<sup>26</sup> Noting that his satire, “generally lively and good-humoured,” turns “acrid” and filled “with relentless enmity” when he talks of lawyers, the reviewer questions Trollope’s “honest

diligence” in investigating the law and strongly implies that he ought to reflect before he speaks on the subject.<sup>27</sup> He goes on to accuse Trollope of willful ignorance of the entire system of advocacy.<sup>28</sup> Finally, he questions the honesty of the novelist’s own professional practice:

We do not say that the practice of advocacy can, by no possibility, twist the mind. . . . Every profession has its characteristic tendencies to evil. . . . Even the profession of novel-writing is not exempt from the infirmities by which other professions are beset. Let Mr. Trollope consider whether a man’s perfect truthfulness, in the highest sense of the word, is not placed in danger, when he drags before his own petty bar, individuals or corporate bodies, and condemns them as false, without troubling himself to master the facts of the charge under which he is trying them.<sup>29</sup>

This final *ad hominem* attack reveals the vulnerability of a critique grounded entirely in what contemporary law and literature studies would classify as a “law in literature” approach. If an author’s law is faulty—and Trollope, like most laymen, clearly does not understand the underlying rationale of defense advocacy—then his critique is invalid, and he appears either ignorant or dishonest.<sup>30</sup>

## II. TROLLOPE’S SUBTLE CRITIQUE OF THE LAW IN *ORLEY FARM*

The initial critics of *Orley Farm* were united in disliking two significant aspects of the novel: the first, obviously, was Trollope’s overt attack on the law as dishonest; the second was his inclusion of the group of commercial gentlemen represented most prominently by Kantwise and Moulder. The writers for both *The Home and Foreign Review* and the *North British Review* were particularly vocal, with the latter lamenting Trollope’s habit of featuring “mean,” “hateful,” and “contemptible” portraits of low life in his novels in general, and rhetorically asking of *Orley Farm* in particular, “What object, for example, is to be gained by the elaborate portraiture of such a person as Mr. Moulder.”<sup>31</sup> In fact, Moulder, Kantwise, and the rest of the characters in Great St. Helens are central to Trollope’s second, subtler attempt to challenge the charismatic authority of the law by revealing its fundamentally commercial character.<sup>32</sup>

Just as he had been instrumental in raising the perils of cross-examination, the solicitor Dockwraith is the individual responsible for connecting the legal and commercial worlds of *Orley Farm*. Having taken up residence in the commercial room of The Bull in Leeds on his way to use the new evidence he has discovered to induce Joseph

Mason to reopen legal proceedings against Lady Mason, Dockwrath is challenged by Moulder to justify his presence in space customarily set aside for traveling “lords of the road” and their sample cases (*OF*, 6:44). His general response, “In this enterprising country all men are more or less commercial,” is swiftly applied to his own case in language appropriate for an attorney with Dockwrath’s command of legal diction: “Taking the word in its broadest, strictest, and most intelligible sense, I am a commercial gentleman” (*OF*, 6:48). The next day, during his conversation with Joseph Mason, Dockwrath reveals the aspect of his professional character that especially qualifies him as commercial: unlike the elder Round, he is “sharp,—very sharp indeed” (*OF*, 7:60). His sharpness is recalled much later in the novel by Chaffanbrass, first in Aram’s office, and later during Dockwrath’s cross-examination at the trial, where sharpness comes to imply self-interested money grubbing.<sup>33</sup>

As Trollope represents it, the law itself is rather “sharp” throughout *Orley Farm*. In the reader’s introduction to Furnival, for example, the narrator discusses the “well-understood” system in which advocates are retained more to neutralize other advocates than to plead effectively for a client, but a system designed above all to enrich the opposing barristers (*OF*, 10:85). Later, Furnival himself reveals the degree to which commercial maneuvering has entered into his practice when he pays his clerk, Crabwitz, 50 pounds to attempt to bribe Dockwrath to drop the case.<sup>34</sup> It is in the final presentation of Chaffanbrass, however, that law and commerce are brought closest together: “Considering the lights with which he had been lightened, there was a species of honesty about Mr. Chaffanbrass which certainly deserved praise. He was always true to the man whose money he had taken, and gave to his customer, with all the power at his command, that assistance which he had professed to sell” (*OF*, 75:686). Careful, as always, not to grant the Old Bailey barrister too much credit, the narrator goes on to equate Chaffanbrass’s professional honesty with that of an Irish assassin.

The explanation of the commercial nature of the legal system itself, and especially of cross-examination, is ceded by the narrator to Moulder, the law’s most assiduous defender in *Orley Farm*. Correctly predicting that Kenneby will not be allowed simply to tell the truth at trial, Moulder asks his soon-to-be-bewildered brother-in-law, “What are them fellows [barristers] paid for if you’re to say whatever you pleases out in your own way? . . . ‘To hear such nonsense sets one past oneself,’ continued he, ‘as if all those lawyers were brought together there—the cleverest and sharpest fellows in the kingdom,

mind you—to listen to a man like John here telling his own story in his own way” (*OF*, 61:556). Crucially, Moulder extends the charge of sharpness originally applied to Dockwraith from a single member of the lower branch of solicitors and attorneys to the entirety of the upper division of the legal profession. His apology only half completed, however, Moulder goes on to equate his commerce in suspect sugar with lawyers’ traffic in unjust verdicts: “My duty is to sell, and I sell;—and it’s their duty to get a verdict” (*OF*, 61:556). His concluding remarks on the justness of the entire system not only cement the connection between law and commerce, they also reveal the ways in which England’s system of commercialized advocacy has transformed legal justice into a luxury good available only to those able to pay: “I say it is justice. You can have it if you choose to pay for it, and so can I. If I buy a greatcoat against the winter, and you go out at night without having one, is it injustice because you’re perished by the cold while I’m as warm as toast. I say it’s a grand thing to live in a country where one can buy a greatcoat” (*OF*, 61:556).

Moulder is thus the lawyers’ clearest analog and the law’s most ardent apologist; in neither role is he calculated to edify the professional constituency with which he is arrayed. Trollope’s deployment of the commercial gentlemen both aligns the law with sharp dealing, ranging from Moulder’s hypothetical sale of adulterated foodstuffs to the actual peddling of shoddy merchandise like Kantwise’s cast-iron furniture, and questions the authority of lawyers as professionals by accusing them of exchanging their goods directly for money like any common tradesman.<sup>35</sup> This representational strategy takes on added theoretical significance in the context of Weber’s formulation of charisma. According to Weber, “In its ‘pure’ form, charisma is never a source of private gain for its holders in the sense of economic exploitation by the making of a deal”; however, “For charisma to be transformed into a permanent routine structure, it is necessary that its anti-economic character should be altered.”<sup>36</sup> The more that its economic character is altered, though, the less that the charisma, whether located in an individual or an institution, appears prestigious and authoritative. In other words, by representing the law as a species of commerce, Trollope undermines the value of both individual lawyers’ rhetorical proofs and institutional law’s ritualized signs of legitimate charismatic authority.

Into the prestige vacuum he has created, Trollope inserts the professional writer as a more deserving locus of charismatic authority. Among the novel’s characters, Felix Graham exemplifies this shift from the law to writing. Unsuccessful as an overly scrupulous barrister, Graham

has taken to writing “poetry for the periodicals, and politics for the penny papers” (*OF*, 18:156), an alternate vocation which allows him not to “abandon his great ideas or descend into the arena with other weapons than those which he regarded as fitting for an honest man’s hand” (*OF*, 18:156). His writing has allowed him to catch the attention of Judge Staveley, and Graham does not intend to give it up, even at the indirectly expressed wish of his future father-in-law.<sup>37</sup> The narrator, too, presents himself as a more truthful alternative to the lawyers who feature in his story. From the very beginning, he eschews any secrets from the reader, admitting that his narrative will avoid “rural delights” as readily as agricultural advice (*OF*, 1:1). Unlike the novel’s lawyers, the narrator places few limits on his conversation with his clients, dialectically engaging the reader on subjects as diverse as molding a wife and the hidden motives of Sir Peregrine Orme and Lady Mason during their brief courtship.<sup>38</sup> The narrator’s most dramatic moment of truth, however, comes immediately after Lady Mason’s admission of guilt to Sir Peregrine, an event which he hopes “will not have taken anybody by surprise” (*OF*, 45:404). A thoroughly realistic and forthright storyteller, the narrator self-consciously repudiates the kind of dramatic secrets then so popular in contemporary sensation fiction.

The professional writer in the novel most invested in seizing the prestige traditionally accorded to lawyers is, of course, Anthony Trollope, who uses the form of the novel itself to legitimate his own proto-legal charismatic authority. In *The Reasonable Man: Trollope’s Legal Fiction*, Coral Lansbury makes a compelling case for Trollope’s adoption of a novelistic style derived from his many years of work at the Post Office. According to Lansbury, a significant component of that work was the preparation of Post Office reports, the style and format of which had been determined in the 1820s by Francis Freeling. Freeling expected all reports to conform to the three-part structure of a legal declaration, as defined by John Frederick Archbold’s *A Digest of the Law Relative to Pleading and Evidence in Actions Real, Personal and Mixed* (1821), and these strictures meant that Post Office clerks like Trollope were viewed by many lawyers as “presumptuously attempting to assume the legal function in government that the gentry enjoyed in the country.”<sup>39</sup> Before he ever published a novel, in other words, Trollope was already usurping the legitimate authority of the law. Little wonder, then, that the form of such reports “was to influence the structure of his novels just as legal modes of examination and evidence come to define his narrative art.”<sup>40</sup>

Thematically and formally in *Orley Farm*, Trollope self-consciously adopts a “literature as law” approach which proposes the realist novel as a more appropriate mechanism for the dispensation of justice than the courts. In the most blatant deployment of his judicial powers, Trollope requires Lady Mason, who had been acquitted eight to four by the jury, to surrender Orley Farm to her stepson and leave England after the trial. Perhaps unsurprisingly, Trollope’s more subtle assault on the law in the novel went largely unnoticed by his early reviewers, who were content to castigate him for his inaccuracies, and has received proportionately less attention in subsequent criticism. I would argue, however, that it is precisely in his less overt efforts that Trollope achieves his greatest success in supplanting lawyers as the keepers of charismatic authority; indeed, he sustains his energies in this direction in his later legal fictions, including in *The Eustace Diamonds*, to which we now turn.

### III. UNDERMINING THE LAW IN *THE EUSTACE DIAMONDS*

Although considerably abbreviated and softened, Trollope’s criticism of the law in *The Eustace Diamonds* remains substantially the same as that made in *Orley Farm*. That legal discourse and practice continue to conceal rather than to reveal the truth emerges from the narrator’s succinct description of the professional practice of Frank Greystock, the latter novel’s more prominent barrister and one of three prospective suitors of Lady Eustace: “[H]e was now intent on mastering the mysteries of some much-complicated legal case which had been confided to him, in order that he might present it to a jury enveloped in increased mystery.”<sup>41</sup> In his work in Parliament, as a hatchet-man for the Conservative Party, Greystock’s behavior also recalls the primary reason for lawyers’ tendencies towards untruthfulness—their devotion to their clients. Called upon to attack the Liberal government’s treatment of the Sawab of Mygawb, about whom the narrator states he would not have troubled himself if it weren’t an opportunity to speak in Opposition, Greystock imputes the characters and conduct of the Indian minister and his under-secretary. “It was just the case for a lawyer,” the narrator pronounces, “admitting that kind of advocacy which it is a lawyer’s business to practise” (*ED*, 7:54). This brief allusion to the rhetorical excesses of defense counsel—Greystock’s actions on behalf of his party are analogous to those of a lawyer advocating with zeal on behalf of his client—echoes Trollope’s more overt attack on criminal advocacy in *Orley Farm*.

Trollope also revives his earlier charges that the lawyer-client relationship does not allow for frank communication, and that the courts can neither discover the truth nor render a just verdict at trial. When Lord Fawn approaches Mr. Camperdown, the dedicated if not overly knowledgeable family lawyer of almost everyone in the novel, for advice about his prospective bride's entanglements with the disputed necklace, Camperdown finds himself unable to share his true opinion, that Lady Eustace is "a dishonest, lying, evil-minded harpy," because "it is not the business of a lawyer to tell his client evil things of the lady whom the client is engaged to marry" (*ED*, 11:89). The courts' inability to discover the truth originates in both their class biases and their devotion to procedure. Both are on display during the novel's final trial, which Lady Eustace, a wealthy "swell," manages to avoid by paying a doctor to certify her as unable to make the journey from Scotland; the narrator writes, with considerable scorn, "If a doctor will certify that a lady is dying, what can any judge do, or any jury? There are certain statements which, though they are false as hell, must be treated as though they were true as gospel" (*ED*, 78:629). Not only does she avoid having to testify, Lady Eustace also escapes prosecution, not to mention conviction, for perjury.

As he had in *Orley Farm*, in *The Eustace Diamonds* Trollope advertises his authority to critique the law through his command of legal detail. Perhaps as a result of Trollope's own greater contacts with members of the upper branch, barristers receive somewhat gentler treatment in the latter novel, with much of the criticism focusing on junior members of the profession.<sup>42</sup> Greystock's unsuccessful friend Herriot thus provides the narrator with the opportunity to comment on the curiously inverse relationship between knowledge and success in the law:

The best of the legal profession consists in this;—that when you get fairly at work you may give over working. An aspirant must learn everything; but a man may make his fortune at it, and know almost nothing. . . . Greystock never thought of the law now, unless he had some special case in hand; but Herriot could not afford to go out on his holiday without two volumes if Stone and Toddy's Digest in his portmanteau. (*ED*, 23:184)

Trollope also carefully notes that Greystock's early success does not mean that he is free from potential insolvency. In addition to coming from a long line of improvident spenders, the young barrister is also financially hampered by the rules of his profession, which prohibit



him from aggressively pursuing the fees owed to him by attorneys and wealthy clients.<sup>43</sup> The novel also offers its readers quick lessons in the legal maneuvers attending a suit in Chancery, the detail of criminal procedure, the rituals of being examined before a magistrate in a police-court, and even the rhetorical flourishes of a defense counsel's final address to the jury at trial.<sup>44</sup>

Trollope's most meticulous example of legal realism, however, is the lengthy opinion on the difference between heirlooms and paraphernalia offered in the novel by Mr. Dove, and written for the novel by Meriwether.<sup>45</sup> The aid of this "benevolent pilot" allows Trollope to demonstrate his command of realistic legal detail, thereby silencing his former foes, the lawyer-reviewers. *The Eustace Diamonds* appeared when its author's reputation and reviewers' stamina were both declining, and so the novel did not receive the same level of scrutiny as *Orley Farm*. Such reviews as still exist, however, either do not touch upon law in the novel or offer qualified praise. *The Examiner*, for instance, published a positive but shallow review that left the novel's law unmentioned.<sup>46</sup> More telling is the review in *The Athenaeum*, which offered a backhanded endorsement of the latter novel written in a morally dismissive tone; however, even this somewhat hostile reader has grudging praise for Trollope's law: "[W]e meet our old friend the barrister, whose opinion upon heirlooms is given at length, and who in this case touches the law happily on its poetic side."<sup>47</sup> Given reviewers' general impatience with both Trollope's prodigious output and his increasingly unfashionable fictional methods by the 1870s, it seems reasonable to conclude that Meriwether succeeded in piloting Trollope through the rocks and shoals of his later legal fiction.

The impeccable accuracy of the passage on heirlooms lends authority to Trollope's sustained, understated efforts to siphon away the prestige of the law throughout *The Eustace Diamonds*. Dove's own learned opinion serve as a crucial piece of evidence for this project: technically correct, it succeeds only in exposing Camperdown's ignorance and in granting Lady Eustace's otherwise dishonest possession of the necklace a justification in law. Moreover, in its devotion to precedent, and Dove cites no less than five legal authorities and eleven previous cases, the opinion makes common law seem obsessed with minutiae at the expense of simple truth, incapable of rendering a judgment based on reason, and anachronistic within the present action of the novel. Ironically, the praise offered by the reviewer for *The Athenaeum*—that Trollope "touches the law happily on its poetic side"—hints, apparently without realizing it, at the primary mechanism by which the novel,

through Dove's opinion, works to undermine the law. As Dove himself explains in a private conversation with Camperdown, the system of heirlooms was not designed for the protection of property, but for "the more picturesque idea of maintaining chivalric associations" (*ED*, 28:229), thereby subjecting the law to "the spirit of chivalry and . . . romance" (*ED*, 28:229). The law in *The Eustace Diamonds* is poetic, picturesque, chivalric and, above all, romantic; and these are the terms of Trollope's legal critique.

This unexpected romantic side of the law brings it uncomfortably close to the predilections of the novel's female protagonist, Lady Eustace.<sup>48</sup> The narrator repeatedly characterizes her as romantic, whether directly—"she was alive to the romance of the thing, and was in love with the idea of being in love" (*ED*, 5:39)—or indirectly, through her readings preferences: in poetry, Shelley and Byron; in fiction, French novels and sensation narratives. Lady Eustace is particularly enamored with Byron's "The Corsair," and she repeatedly evaluates her prospective suitors according to the standard of manly behavior she finds in the poem. The two principal lawyers in the novel seem inexorably draw to her, Greystock as her suitor, and Camperdown as her nemesis; the latter cannot seem to resist applying to her fanciful, one might say romantic, pejoratives like "harpy" and "syren" (*ED*, 28:223). In thus establishing an analogical connection between Lady Eustace and the law, through their shared capacity for romance, Trollope echoes with increased irony the unflattering association he had already proposed between law and commerce in *Orely Farm*.

Opposing all forms of romance in *The Eustace Diamonds* is the realist novel itself, exemplified by Trollope's own narrative. The novel repeatedly frustrates the expectations of readers accustomed to more romantic fiction, and numerous narrative asides call attention to these moments and justify them according to the strictures of realism. Readers of sensation novels like Wilkie Collins's *The Moonstone* (1868), whose titular jewel requires an opium-induced reenactment of somnambulism to discover, are told immediately the precise location of the stolen Eustace diamonds; the narrator goes on to declare that he "scorns to keep from his reader any secret that is known to himself" (*ED*, 52:422).<sup>49</sup> Other readers, "who think the part of a lover to the heroine should be always filled by a young man with heroic attributes," are cautioned to temper their expectations to the conditions of real life when judging Greystock, who belongs to "a middle class of men, who, by reason of their education, are peculiarly susceptible to the charms of womanhood, but who literally cannot marry for love,

because their earnings will do no more than support themselves” (*ED*, 76:608).<sup>50</sup> Finally, still other readers, who may long for a kind of over-determined circularity whereby characters “should be made to operate backwards and forwards on each other from the beginning to the end” (*ED*, 77:625–26)—and who, in this case, might expect that Greystock and Lucy Morris would be married by Emilius—find their desires for closure frustrated by the habitual travel plans of that suspect clergyman.

In chapter 35, entitled “Too Bad for Sympathy,” the narrator explains at length the ethics that underlie the novel’s realist aesthetic. Admitting that the sympathies of his readers “are in truth the great and only aim” of the novel (*ED*, 35:282), he responds to imagined objections to Greystock’s mixed character and neglect of Lucy Morris by a “reading world [which] has taught itself to like best the characters of all but divine men and women” (*ED*, 35:282). In an allusion to the chivalric associations underlying the system of heirlooms, the narrator declares, “It is very easy to depict a hero,—a man absolutely stainless, perfect as an Arthur . . . I do not know that we have gained much by this untrue portraiture” (*ED*, 35:281). Such perfect heroes do not exist in real life, the narrator continues, and may either furnish readers with a false perception of the world, or discourage them from improving themselves because perfection is so far removed from their daily lives. By contrast, a “true picture of life as it is, if it could be adequately painted, would show men what they are, and how they might rise, not, indeed, to perfection, but one step first, and then another on the ladder” (*ED*, 35:283). Ironically, then, exposing the flaws in Greystock’s character, and in the law of which he is a part, is both the duty and the proof, in Weber’s sense, of a realistic novelist claiming the charismatic authority of “all teachers, leaders, legislators, spiritual pastors, and masters” to change the community structures and symbolic systems of Victorian society one step at a time (*ED*, 35:283).

#### IV. CLOSING ARGUMENTS

Trollope’s strategies of legal critique in *Orley Farm* and *The Eustace Diamonds* resonate with two broader topics of debate during the mid-Victorian period. On the one hand, England’s system of law and the charismatic authority of lawyers had come under increasing pressure on a number of fronts since the 1840s. Lawyers’ own unease at the state of affairs is apparent not only in the general hostility of the reviews of *Orley Farm*, but also in the following defensive remark from the writer for the *National Review*:

*Albert D. Pionke*

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Mr. Trollope probably meant nothing more than that barristers are sometimes vulgar and unscrupulous, and judges sometimes petulant and overbearing; but he should beware of discussing as a grievance that which is really a necessity, and of grounding on imaginary and impossible facts an imputation on the honour and good faith of a profession which certainly contains in its ranks as many scrupulous and high-minded gentlemen as any other.<sup>51</sup>

From within the profession itself, the collective ritual culture of lawyers, what Weber would refer to as the routinization of their power, had declined from to its heyday in the seventeenth century.<sup>52</sup> Additionally, for much of the nineteenth century, members of the upper and lower branches competed with one another for prestige, bickering over judicial appointments, the practice of advocacy in the new county courts, and the wearing of professional costume.<sup>53</sup> Parliamentary scrutiny, in the form of the 1846 Select Committee on Legal Education—which found education levels throughout the profession “extremely unsatisfying and incomplete”—did not add to lawyers’ charismatic luster.<sup>54</sup> Even more damaging were the excesses of criminal advocacy, infamously revealed by the 1840 Courvoisier murder trial in which, informed first-hand of his client’s guilt in the murder of Lord William Russell, barrister Charles Phillips nonetheless publicly declared Courvoisier innocent in his final address to the jury.<sup>55</sup> Then, in 1845, the “War between the Bar and the Press” began when barristers in the Oxford and Western Circuits were barred from reporting for the newspapers, the result of which was that the legal profession was lampooned throughout the popular press.<sup>56</sup> Little wonder, then, that Furnival confides to Lady Mason, “We lawyers are much abused now-a-days” (*OF*, 12:107).

Even as lawyers’ professional reputation suffered, English writers and reviewers were seeking to establish a respectable account of the form and function of the novel. This effort had been ongoing since the mid-eighteenth century at least, but it took on increased urgency in the nineteenth century in general due to the novel’s dominance of the literary marketplace and the popularity of novel-reading fostered by the lending libraries, and in the 1850s in particular as a result of the sensation fiction’s dramatic and, according to some, morally suspect emergence. Edwin Eigner and George Worth’s *Victorian Criticism of the Novel* offers a particularly valuable introduction to this debate, which often resolved itself into a binary opposition between romantic and realistic fiction. Associated with the writings of Charles Dickens, the first of these novelistic modes was admittedly popular, but, except from the pen of a talent like “the inimitable,” aesthetically

and ethically questionable for its often-hyperbolic appeals to emotion and ridiculously unreal characters. Realistic fiction, represented by the novels of William Makepeace Thackeray, and later by the works of Trollope himself, was held to be much more respectable for both its rational representations of modern life and its devotion to more complex strategies of characterization. The early response to *Orley Farm* in the *North British Review* offers just such an account of mid-century fiction, and equivocally praises Trollope's novels, "considered as representations of society," as "more valuable than the—in all other respects—much higher works of Dickens and Thackeray."<sup>57</sup> Ultimately, this discrimination between romantic and realistic fiction served to define a reputable professional space for Victorian novelists.<sup>58</sup> When Trollope, in both of the legal novels discussed here, but especially in *The Eustace Diamonds*, elevates the writer at the expense of the lawyer, and further predicates this elevation on the division between law infused with romantic obfuscation and writing devoted to realistic detail, he borrows from a much larger conversation about the professionalization of letters in the latter nineteenth century.

In fact, Trollope was intimately involved in and committed to this process of establishing writing as a legitimate profession. That he was thinking of writing in professional terms as early as 1860 becomes evident from a letter Trollope wrote to Mrs. Catherine Gould on 13 April of that year, in which he advises that writing "requires that which all other *professions* require,—but which outsiders do not in general presume to be necessary in the *profession* of literature,—considerable training, and much hard grinding industry."<sup>59</sup> He remained remarkably consistent on this topic, writing in the *Autobiography* (1883) that he had intended to write a history of the English novel "to vindicate my own *profession* as a novelist, and also to vindicate that public taste in literature which has created and nourished the *profession* which I follow."<sup>60</sup> Trollope's most concentrated efforts to foster the professionalization of novel writing, through his work on behalf of the Royal Literary Fund, coincide precisely with the period in his career defined by *Orley Farm* and *The Eustace Diamonds*. As Bradford Booth painstakingly documents, Trollope became a life member of this chief charitable organization for writers in 1861, joined the Committee of Management in 1864, served as treasurer from 1869 until his death in 1882, and was the single most active member in the group's Anniversary Dinners between 1861 and 1871.<sup>61</sup> His comments during his replies to the formal toasts to Literature in 1861, 1864 and 1869 all refer to literature as a profession equal to or greater than law, medicine, politics,

or the church.<sup>62</sup> These biographical details invite us to read Trollope's legal fictions as complementary, novelistic interventions into the professionalization of writing, and the creation of charismatic authority for writers, especially realistic ones, that is equivalent to, and perhaps comes at the expense of, the prestige accorded to the law.<sup>63</sup>

Given the extraordinary attention that Trollope devoted—within *Orley Farm* and *The Eustace Diamonds* certainly, but also throughout his many novels, during his work for the Post Office, and after his move to London in 1860—to legal representations, literary prestige, and the aesthetics of the realist novel, it is curious that until relatively recently he remained a seldom-discussed figure in contemporary scholarship.<sup>64</sup> Currently, despite the fact that his novels contain a veritable cornucopia of legal material, Trollope is largely forgotten by law and literature scholars, who, when they seek a Victorian subject, consistently turn to Dickens. Serjeant Buzzfuzz, Mr. Tulkinghorn, Eugene Wrayburn, and company unquestionably deserve examination, but as Victorian critics of the novel were quick to observe, Dickens represents only one face of nineteenth-century fiction. Concentrating exclusively on Dickens's strategies for representing the law, and thereby ignoring the dominant and opposing realistic aesthetic of the novel represented by Trollope, distorts both the relevance and the range of Victorian fiction for law and literature studies. Trollope's role in the history of the English novel and of the growth of English as a discipline deserves further consideration as well, since, as I hope that this essay has shown, Trollope's realism is thoughtful, subtle, and represents a crucial stage in the professionalization of literature. Who among us would disagree with Trollope when he declares, "Doubtless this profession is of all the most precarious, and yet it is of all the most alluring. It may be begun without capital, without patronage, and without favour. It may be carried on under any circumstance of residence, amidst the whirl of fashion, or in the silence of the most secluded retreat."<sup>65</sup> To mix with the world of fashion, or to enjoy a writerly sabbatical in the most secluded retreat, however, requires individual charisma and professional prestige; that we twenty-first century professors of literature can claim either of these is due in no small part to Trollope's successful navigation of those terrible meshes of the law.

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## NOTES

<sup>1</sup> Anthony Trollope, *Phineas Finn*, ed. David Skilton, introd. J. Enoch Powell (London: Trollope Society, 1989), 234.

<sup>2</sup> Sir Francis Newbolt's earliest efforts in this direction can be found in "Reg V. Mason," *The Nineteenth Century and After* 95 (1924): 227–36. In this essay he offers the following fictionalized judicial response to the legal mistakes of the novel: "The lady is charged with perjury, but as no single positive fact has been proved before you, not one, large or small, which is inconsistent with the genuineness of the codicil, with her entire innocence, and with the decision of the Ecclesiastical Court, which was not appealed against, I think that, even without identifying the accused person, you might now safely say that whoever here is charged with whatever it is did not do it" (235). In his own article otherwise devoted to pointing out the technical differences between Trollope's trials and actual trials in mid-twentieth-century America—"Trollope's Jury Trials," *Nineteenth-Century Fiction* 6 (1952)—Clement Franklin Robinson feels compelled to acknowledge Newbolt's critique even as he dismisses it by observing, "Trollope was writing a story and not a court report" (260).

<sup>3</sup> R. D. McMaster, *Trollope and the Law* (Houndmills: Macmillan, 1986), esp. 1–10, offers the most complete account of Trollope's efforts at accuracy in print, as well as a bibliographic survey of the evidence collected by previous biographers and critics. Even critics otherwise well equipped to consider the two novels' representations of law seldom do so in detail. Andrew Wright, *Anthony Trollope: Dream and Art* (London: MacMillan, 1983), for example, accounts for Trollope's accuracy in the later novel by noting, "Of course it is always preferable to be accurate in such matters, and Trollope did take more trouble to get the law right in *The Eustace Diamonds*" (124); similarly, Kieran Dolan, in *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge Univ. Press, 1999), confines his remarks to observing, "Trollope was stung somewhat by the criticisms of *Orley Farm*," and recalling his reliance on Meriwether (108).

<sup>4</sup> Law and literature studies conventionally recognizes four approaches to the combination of its eponymous disciplines: 1) law in literature, long the province of lawyer-critics concerned with the accurate representation of legal matters in literary texts, now increasingly the focus of literature scholars invested in historically-attentive critique and cultural studies; 2) law as literature, which considers both laws and legal decisions as rhetorical objects worthy of textual and aesthetic analysis; 3) law of literature, still mainly the province of professional lawyers, but also a small number of literary and historical scholars, concerned with copyright and indecent publication laws; and 4) literature as law, which examines the claims of literary texts to extra-judicial legal authority. A useful introduction to the field, and to the increasingly porous distinctions among the hermeneutics just mentioned, can be found in *Law and Literature*, eds. Michael Freeman and Andrew D. E. Lewis (Oxford: Oxford Univ. Press, 1999). As I hope to show, Trollope is quite savvy in his combination of law in literature and literature as law approaches.

<sup>5</sup> Trollope, *Orley Farm*, ed. David Skilton, introd. John Mortimer (London: Trollope Society, 1993), 2:19. Hereafter abbreviated *OF* and cited parenthetically by chapter and page number.

<sup>6</sup> See also Trollope, *Orley Farm*, 26:234.

<sup>7</sup> See Trollope, *Orley Farm*, 48:432; 75:689.

<sup>8</sup> David J. A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800–1865* (Oxford: Clarendon Press, 1998), offers the most comprehensive account



in print of the development of the adversarial trial system, which is predicated on the possibility of cross-examination.

<sup>9</sup> Dockwraith's preference for documents over testimony supplies further evidence for Alexander Welsh's thesis, in *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins Univ. Press, 1992), that "narrative consisting of carefully managed circumstantial evidence, highly conclusive in itself and often scornful of direct testimony, flourished nearly everywhere" in the long nineteenth century (ix).

<sup>10</sup> Glynn-Ellen Fisichelli, "The Language of Law and Love: Anthony Trollope's *Orley Farm*," *ELH* 61 (1994): 636.

<sup>11</sup> See Fisichelli, 649–50.

<sup>12</sup> In his brief discussion of *Orley Farm* (164–68), A. O. J. Cockshut, in *Anthony Trollope: A Critical Study* (London: Collins, 1955), recognizes that these traditions and forms of etiquette "enable those connected with the law to think in two separate and inconsistent ways without discomfort" (167). He thus acknowledges the gap between law and truth enabled by these ritual forms, but does not explore how these same forms simultaneously create institutional authority for the novel's lawyers.

<sup>13</sup> On the status of barristers' clerks, see Trollope, *Orley Farm*, 13:116–17.

<sup>14</sup> See Trollope, *Orley Farm*, 13:112, 49:443, 25:226, 62:562, and 16:144. As both Harry Kirk, in *Portrait of a Profession: A History of the Solicitor's Profession, 1100 to the Present Day* (London: Oyez Publishing, 1976), and McMaster, *Trollope and the Law* note, this prohibition of contact between barristers and clients had begun to relax by the 1850s, making Trollope's grasp of legal detail a bit out of date on this point. See Kirk 172–72; and McMaster, 34–38. Accurate or not, however, the gendered and sexual tensions that Trollope explores in the lawyer/client relationship between Furnival and Lady Mason reflect what Paula Jean Reiter has identified as a broader confluence between the roles of male lawyers and husbands during the period. See Reiter, "Husbands, Wives, and Lawyers: Gender Roles and Professional Representations in Trollope and the Adelaide Bartlett Case," in *Un-Disciplining Literature: Literature, Law, and Culture*, ed. Kostas Myrsiades and Linda Myrsiades (New York: Peter Lang, 1999), 246–70.

<sup>15</sup> See Trollope, *Orley Farm*, 75:687.

<sup>16</sup> Kenneby's efforts are made all the more painful by repeated admonishments from the judge to speak up, and Trollope cannot resist upbraiding those on the bench for thus further intimidating witnesses (*OF*, 71:643).

<sup>17</sup> See Trollope, *Orley Farm*, 75:690.

<sup>18</sup> In "Trollope and the Career: Vocational Trajectories and the Management of Ambition," *Victorian Studies* 45 (2003): 247–78, Nicholas Dames demonstrates the heuristic value of Weber for understanding Trollope, applying Weber's account of professionalism and vocation to make sense of the Parliamentary careerism on display in the Palliser novels.

<sup>19</sup> Max Weber, *On Charisma and Institution Building: Selected Papers*, ed. S. N. Eisenstadt (Chicago: Univ. of Chicago Press, 1968), 57.

<sup>20</sup> See Weber, 19. Judges, and lawyers more broadly, are not unique in their reliance on charismatic authority—for Weber, and, I would argue, for Trollope, all charismatic leaders operate in this way.

<sup>21</sup> Weber, 20.

<sup>22</sup> See also Trollope, *Orley Farm*, 71:644.

<sup>23</sup> "Orley Farm," *National Review* 31 (January 1863): 38.



<sup>24</sup> Review of *Orley Farm*, by Anthony Trollope, *The Home and Foreign Review* 2 (1863): 292.

<sup>25</sup> In the anonymous review of *Orley Farm*, the writer for *The Saturday Review* declared, "Unfortunately, however, there is one drawback to *Orley Farm*. It is a novel with a purpose. Mr. Trollope wishes to express certain opinions he holds as to the bad working of the English courts of law. He thinks that it is wrong for an advocate to support a cause which the advocate thinks a bad one, or to make any effort to deceive a jury. . . . Then, again, Mr. Trollope pities witnesses very much who are cross-examined under our system. . . . even if he were entirely right as a critic of British institutions, it would be very doubtful if he could possibly be right as a novelist" (*The Saturday Review*, 11 October 1862, 444). E. S. Dallas, reviewing for *The Times*, was similarly nonplussed by Trollope's legal purpose: "We cannot praise his theory as to the administration of the law. Mr. Trollope, in describing the process of the suit, has attempted to awaken our interest in the question as to the right mode of conducting a trial. He has apparently taken up the idea expressed by one of his character, that lawyers are all liars, and that the procedure of our courts is less adapted to elicit than to conceal the truth. He thinks that barristers should be judges rather than advocates, should say no more than they think, should refuse to accept a brief where they believe that their proposed client is guilty, and even after they have accepted the brief should throw it up, if circumstances should enable them to see that in defending the case they are hindering the ends of justice. These are notions which from time to time make their appearance in print, which have a thousand times been refuted, which come naturally enough in the pages of fictitious history, but which we are astonished to find in the fiction of an author who has generally so much regard as Mr. Anthony Trollope for hard facts and for common sense" (*The Times*, 26 December 1862, 5).

<sup>26</sup> "Novels and Novelists of the Present Day," *North British Review* 38 (Feb. 1863): 168–90. The novels under consideration in this 1864 review were *The Warden*, *Barchester Towers*, *Dr. Thorne*, *The Three Clerks*, *The Bertrams*, *Framely Parsonage*, *Orley Farm*, *The Small House at Allington*, and *The Macdermots of Ballycloron*.

<sup>27</sup> "Novels and Novelists," 396.

<sup>28</sup> "He is constantly expressing his conviction that if all barristers are not liars, yet the tendency of their profession is to make them do so, and their business to propagate falsehood; and yet he does not seem to us to have taken the trouble to acquaint himself in the slightest degree with the system under which they stand towards their clients, their opponents, and the court, or the nature of the duty they undertake" ("Novels and Novelists," 396–97). As examples of Trollope's ignorance, the reviewer cites Furnival's declaration of his own conviction of Lady Mason's innocence during his closing address, and his attempt to influence the Rounds not to prosecute.

<sup>29</sup> "Novels and Novelists," 398.

<sup>30</sup> For helping me to avoid Trollope's own confusion on the subject of advocacy, as well as other moments of critical indiscretion, I gratefully acknowledge Philip Beidler.

<sup>31</sup> "Novels and Novelists," 390.

<sup>32</sup> In "'Orley Farm' and Real Fiction," *Nineteenth-Century Fiction* 8 (1953), Robert Martin Adam offers a pithy summary of the central problematic of the relationship between commerce and law in the novel. See Adam, 32–35. See also James R. Kincaid's discussion, in *The Novels of Anthony Trollope* (Oxford: Clarendon, 1977), 79–82, of the link in *Orley Farm* between law and commerce.

<sup>33</sup> See Trollope, *Orley Farm*, 62:564, 68:619.

<sup>34</sup> See Trollope, *Orley Farm*, 25:228.

<sup>35</sup> In thus introducing the commercial theme, Trollope is questioning lawyers' claims to gentlemanly status. John Kucich, in *The Power of Lies: Transgression in Victorian Fiction* (Ithaca: Cornell Univ. Press, 1994), 45–50, offers a particularly fine account of the centrality of honesty, broadly conceived as social and pecuniary disinterestedness, to Trollope's ideal of the gentleman. Building on this theme of disinterestedness, Audrey Jaffe traces Trollope's gradual erosion of the gentlemanly status of Ferdinand Lopez in *The Prime Minister*—his transformation from a detached investor to a greedy speculator—an erosion, I would argue, analogous to the effect of Moulder and company on the lawyers of *Orley Farm*. See Jaffe, "Trollope in the Stock Market: Irrational Exuberance and *The Prime Minister*," *Victorian Studies* 45 (2002): 43–64.

<sup>36</sup> Weber, 21, 60.

<sup>37</sup> See Trollope, *Orley Farm*, 58:529, 80:731.

<sup>38</sup> See Trollope, *Orley Farm*, 33:294, 35:310–12.

<sup>39</sup> Coral Lansbury, *The Reasonable Man: Trollope's Legal Fiction* (Princeton: Princeton Univ. Press, 1981), 15.

<sup>40</sup> Lansbury, 21. See also 15n21, for Lansbury's explanation for how Trollope adapts the form of the Post Office report specifically in *Orley Farm*.

<sup>41</sup> Anthony Trollope, *The Eustace Diamonds*, ed. David Skilton, introd. P. D. James (London: Trollope Society, 1990), 13:105. Hereafter abbreviated *ED* and cited parenthetically by chapter and page number.

<sup>42</sup> In "The Lawyers of Anthony Trollope," *Two Addresses Delivered to Members of the Grolier Club* (New York: Grolier Club, 1950), Henry S. Drinker divides Trollope's representations of lawyers into three periods—pre-1860, 1861, post-1861—and attributes the progress from "the conventional type to the actual barrister" entirely to the novelist's move to London in 1859–1860 and his subsequent contact with prominent barristers (26). See also McMaster, 10.

<sup>43</sup> See Trollope, *The Eustace Diamonds*, 62:500.

<sup>44</sup> On suits in Chancery, see Trollope, *The Eustace Diamonds*, 20:165, 43:346; on criminal procedure, 71:575; on police-court, 74; and on rhetoric, 78:630–32.

<sup>45</sup> See Trollope, *The Eustace Diamonds*, 25:201–03.

<sup>46</sup> Review of *The Eustace Diamonds*, by Anthony Trollope, *The Examiner*, 16 November 1872: 1135–36.

<sup>47</sup> Review of *The Eustace Diamonds*, by Anthony Trollope, *The Athenaeum*, 26 October 1872: 527.

<sup>48</sup> Aligning the law with Lizzie Eustace is particularly damaging to the novel's lawyers since, as Shirley Robin Letwin notes, Lizzie is "the perfect antipode of a gentleman," not simply because she lies, but also because her lack of self renders her lying compulsive, unpredictable and dangerous. See his extended reading of her character in *The Gentleman in Trollope: Individuality and Moral Conduct* (Cambridge: Harvard Univ. Press, 1982), 96–105, esp. 104.

<sup>49</sup> Several chapters later, while justifying Frank Greystock's persistent efforts on behalf of his duplicitous cousin, the narrator similarly states, "It is hoped that the reader, to whom every tittle of this story has been told without reserve, and every secret unfolded, will remember that others were not treated with so much open candour" (*ED*, 56:445).

<sup>50</sup> This and other apologies for Greystock might be cited as localized examples of what, in *The Moral Trollope* (Athens: Ohio Univ. Press, 1971), Ruth apRobert has identified as Trollope's broader pattern of Situational Aesthetics and Situational Ethics: "The ethical ends of Trollope's art appear to be best served by his situation-structure. . . .

His stance is that of what we now call Situation Ethics, and I propose that he has a corresponding Situation Aesthetics. His ethics and his aesthetics, that is, are functions of each other, both turning on casuistry. The art of it makes us see the uniqueness of character in circumstances, and the end of it is moral perception" (52). Kincaid's *The Novels of Anthony Trollope* significantly questions apRobert's thesis, however, arguing that underwriting all of Trollope's individual situations is a stable moral code grounded in "a belief in truth and a reflection of truth in behavior, honesty" (14); in Kincaid's pithy formulation, "The situation tests; it is not the determinant" (12).

<sup>51</sup>"Orley Farm," 38.

<sup>52</sup>See Michael Birks, *Gentlemen of the Law* (London: Stevens & Sons, 1960), 4, 129.

<sup>53</sup>See Birks, 239–43; and Kirk, 159, 169.

<sup>54</sup>Kirk, 54.

<sup>55</sup>See Jan-Melissa Schramm, "'The Anatomy of a Barrister's Tongue': Rhetoric, Satire, and the Victorian Bar in England," *Victorian Literature and Culture* 32 (2004): 285–303, esp. 290–93. As Schramm had already noted in her earlier essay—"Is Literature More Ethical than Law? Fitzjames Stephen and Literary Responses to the Advent of Full Legal Representation for Felons" (*Law and Literature*, 417–35)—perhaps the most anxious exponent of defense advocacy was Sir James Fitzjames Stephen. In fact, Stephen's almost painfully defensive essay, "The Morality of Advocacy," appeared in the *Cornhill Magazine* 3 ([April 1861]: 447–59), just as *Orley Farm* was beginning its run. Clearly smarting from the after-effects of the Courvoisier trial, Stephen offers a meticulous apology for defense advocacy, but even he is forced to admit the existence of class of disreputable barristers—the Chaffanbrasses of the criminal bar—who involve themselves repeatedly in the most scandalous cases, but who, Stephen maintains, are not "a fair specimen of the their profession" (456).

<sup>56</sup>See Schramm, "Anatomy," 295–97; "Is Literature More Ethical than Law?," 425–28; and *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge Univ. Press, 2000), 14–15, 117.

<sup>57</sup>"Novels and Novelists," 187. As Dolan notes in *Fiction and the Law*, advocates for the realistic camp could reductively descend to an "obsessive and narrow 'realism of correspondence'" (108), especially when representing lawyers and the law, at which times a fierce competition could emerge: "For the realist novelist is bound to tell the truth like a witness on oath, and any misrepresentation might amount to artistic failure. . . . The mimetic theory of art and the English system of advocacy are brought into conflict by the novel's determination to evaluate the ethos and truth-claims of the law" (110). Although I would argue that Trollope's best fiction rises above the aesthetically limiting representational strategy outlined by Dolan, I would also wish to locate *Orley Farm* and *The Eustace Diamonds* within this broader context of jockeying for professional prestige.

<sup>58</sup>I do not mean to suggest that more romantic novelists did not also seek to usurp authority from the law; their techniques for doing so were different from Trollope's strategies of realistic detail and analogical representation, however. In a comparative reading of Sir Walter Scott's *Heart of Midlothian*, Elizabeth Gaskell's *Mary Barton* and George Eliot's *Adam Bede* and *Felix Holt*, Hilary Schor's "Show-Trials: Character, Conviction and the Law in Victorian Fiction" (*Cardozo Studies in Law and Literature* 11 [1999]: 179–95) documents the "tension between law and affection that the novel obsessively stages" (179).

<sup>59</sup> *The Letters of Anthony Trollope*, ed. John Hall (Stanford: Stanford Univ. Press, 1983), 100, emphases mine.

<sup>60</sup> Anthony Trollope, *An Autobiography* (1883), ed. David Skilton, introd. John Sutherland (London: Trollope Society, 1999), 134, emphasis mine. In *The Novel-Machine: The Theory and Fiction of Anthony Trollope* (Baltimore: Johns Hopkins Univ. Press, 1980), one of the most insightful readings of the *Autobiography* in print, Walter Kendrick describes the text as “the clearest, most comprehensive statement of the theory of realism that realism itself has ever produced” (3), and goes on to write, “There is nothing modest about Trollope’s claims for the power of the novel, nor is there any self-deprecation in naming his own method as that by which all novels should be constructed” (35).

<sup>61</sup> See Bradford A. Booth, “Trollope and the Royal Literary Fund,” *Nineteenth-Century Fiction* 7 (1952): 209.

<sup>62</sup> On 15 May 1861, responding to the toast at Freemason’s Hall, Trollope declared, “at the present time, a profession has been formed in England which is protected by all that phalanx of outward rules and inward feelings with which other professions in this country are surrounded and protected. It has not yet come to this, that the father of a family, in his prudence, thinking how he will dispose of the energies of his son, will talk of sending him into Literature; but I venture to think the time will some come when this will be done. . . . I think that the time is coming when literature will be regarded as a profession in this country, as the law, the church, and physic, are now regarded” (quoted in Booth, 210–11). On 18 May 1864, at St. James Hall, Trollope amplified his claim: “as a profession it [literature] need yield the palm to no other. The laurels which are there gathered may perhaps not branch as widely as those which are plucked into the pursuit of law and politics, but I think they keep their verdure somewhat longer, and that there is among their berries a certain fragrance of the spring which is wanting to the laurels which are gathered in those other pursuits” (quoted in Booth, 211). Finally, on 5 May 1869 at Willis’s Rooms, Trollope judged, that “the professors of literature have done, and are doing, as much for the progress and well-being of this country as has been done, or can be done by professors of the law, or of physic, by the arts of war, or even by statesmen and ecclesiastics” (quoted in Booth, 213).

<sup>63</sup> Although in “Legal Subjects, Legal Objects: The Law and Victorian Fiction,” in *A Concise Companion to the Victorian Novel*, ed. Francis O’Gorman (Oxford: Blackwell, 2005), Clare Pettitt argues that “rivalry is not entirely sufficient as a description of the relationship between the law and letters in Victorian Britain” (72), she does acknowledge that, “By the mid-nineteenth century, the ‘profession’ of letters may even have seemed more promising than that of the law” (72).

<sup>64</sup> There is something of a critical revival in Trollope studies under way; in addition to the articles and books from Dames, Fisichelli, Jaffe, and Kucich cited earlier, further evidence for this revival include works by Amanda Anderson, Courtney C. Berger, and J. Hillis Miller. In “Trollope’s Modernity,” (*ELH* 74 [2007]: 509–34), Anderson locates Trollope’s sophisticated treatment of honesty, and his persistent return to critical sincerity, within late-Victorian constructions of liberal subjectivity. Berger’s “Partying with the Opposition: Social Politics in *The Prime Minister*,” (*Texas Studies in Literature and Language* 45 [2003]: 315–36), explores the charges of “vulgarity” made against Trollope by his early reviewers, arguing that at its root, this “vulgarity” refers to the interchangeability of the political and the social in *The Prime Minister* that precipitates a crisis of identity and makes even Cabinet-level politicians seem common. “Literature and a Woman’s Right to Choose,” (*diacritics* 35 [2005]: 42–58), by J. Hillis Miller,

explores the ways in which Trollope's insistence on the inalienable right of middle and upper-class women to refuse propositions of marriage finally undermines Victorian, and neo-Victorian ideologies of courtship and marriage.

<sup>65</sup>Quoted in Brooks, 214. This praise of literature comes from Trollope's reply to the toast at the 1869 Anniversary Dinner of the Royal Literary Fund.

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