
Courting Failure

Series on Law, Politics, and Society

- Jack Gieck, *Lichfield: The U.S. Army on Trial*
- Walter Hixson, *Murder, Culture, and Injustice:
Four Sensational Cases in American History*
- Christopher P. Banks and John C. Green, editors,
*Superintending Democracy:
The Courts and the Political Process*
- Donald F. Melhorn Jr., "*Lest We Be Marshall'd*":
Judicial Powers and Politics in Ohio, 1806–1812
- Christopher L. Peterson, *Taming the Sharks:
Towards a Cure for the High-Cost Credit Market*
- John C. Blakeman, *The Bible in the Park:
Religious Expression, Public Forums,
and Federal District Courts*
- Chip Bok, *The Recent History of the United States
in Political Cartoons: A Look Bok!*
- Mary K. Kirtz, Mark J. Kasoff, Rick Farmer, and
John C. Green, editors, *The Elections of 2000:
Politics, Culture, and Economics in North America*
- Douglas Litowitz, *The Destruction of Young
Lawyers: Beyond One L*
- Shannon Gilreath, *Sexual Politics: The Gay
Person in America Today*
- Heidi Slettedahl Macpherson, *Courting Failure:
Women and the Law in
Twentieth-Century Literature*

Courting Failure

Women and the Law in
Twentieth-Century Literature

Heidi Slettedahl Macpherson

The University of Akron Press
Akron, Ohio



Copyright © 2007 Heidi Slettedahl Macpherson
All rights reserved
First edition 2007
Manufactured in the United States of America
11 10 09 08 07 5 4 3 2 1

All inquiries and permissions requests should be addressed to the publisher, The University of Akron Press, Akron, OH 44325-1703

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Macpherson, Heidi Slettedahl.

Courting failure : women and the law in twentieth-century literature / Heidi Slettedahl Macpherson.

p. cm. — (Series on law, politics, and society)

Includes bibliographical references and index.

ISBN 978-1-931968-47-8 (alk. paper)

—

ISBN 978-1-931968-48-5 (pbk. : alk. paper)

1. American literature—20th century—History and criticism.
2. Law in literature. 3. Women in literature. 4. Courts in literature.
5. Canadian literature—20th century—History and criticism.
6. English literature—20th century—History and criticism.
7. Women—Legal status, laws, etc. 8. Legal films (Drama)—History and criticism. 9. Legal television programs (Drama)—History and criticism. 10. Feminist literary criticism. I. Title.

PS228.L39M33 2007

820.9'3554—dc22

2006039518

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984. ∞

Cover art: *Blind Justice III* by Vergie Banks.
All Copyrights Reserved by Artist Vergie Banks
www.littleredtricycle.com

To Allan, always

Contents

Acknowledgments ix

Introduction

Literature, Law, and Desire
1

Chapter One

Prison, Passion, and the Female Gaze
31

Chapter Two

Pursuit of Property: Neoslave Narratives and the Law
55

Chapter Three

“Mother Knows Best”: Women, Children, and the Law
104

Chapter Four

Staging the Scene: Women, Drama, and the Law
149

Chapter Five

Spectacular Expectations: Women, Film, and the Law
172

Conclusion

Courting Success
224

Notes 239

Bibliography 269

Index 286

Acknowledgments

A number of scholars have lent me time, advice, and sources over the years, including Janet Beer, Susan Castillo, Martin Kayman, Ian Scott, Jacquie Berben-Masi, Annette Bennington-McElhiney, Dianne Dutton, Monika Fludernik, and Greta Olson. I would like to thank Vivien Hughes and Michael Hellyer (retired) at the Canadian High Commission. Some of the research for this book has been made possible through the generous assistance of the Canadian government's Faculty Research Program. I have benefited from presenting aspects of this book as conference papers or invited presentations in Oxford, Strasbourg, Nice, Aberystwyth, Cambridge, Reading, and Birmingham. Earlier versions of chapters of this monograph have appeared in the journals *Cynos*, *Journal of Indo-American Studies*, *Compar(a)ison*, and *Journal of American Studies*, and in Monika Fludernik and Greta Olson's *In the Grip of the Law*. Thanks are also extended to the anonymous readers who offered suggestions for improvements and amendments of the original manuscript.

I thank my students at the University of Central Lancashire for their engaging, sometimes odd, and always thought-provoking responses to the texts that I teach and that find their way into this book. I am particularly indebted to my class Contemporary Women Writers (2002), who took opposing views of *Affinity* and other texts on women and the law.

I thank my colleagues at the University of Central Lancashire. Without the university sabbatical I was awarded in January 2005, this book would not have been completed. Specific mention goes to Will Kaufman and Alan Rice, for reading drafts of chapters or grant applications; and to Janice Wardle and Daniel Lamont for support, intellectual debate, and much-needed cups of coffee.

x Acknowledgments

Final thanks go to my family: Judy Clayton, Amy Northrop, Bob Slettedahl, Jill Winter, and most importantly, Allan Macpherson, for love and support.

Introduction

Literature, Law, and Desire

To the extent that law itself is a narrative, it cannot only be the accumulated record of issues resolved through application of law to facts by a neutral decision maker. By recognizing the tinted narrative lens, we can understand how law reinforces the views of the powerful through the continual retelling of stories from the dominant perspective.¹

This book emerges out of the recognition that women's literature and literature about women seem insistently to revisit questions of the law, the parameters of the court, and the regulation of desire. It is not based on whether the representations of the law in literature are accurate or truthful (though there are instances in which I will be comparing the real life basis of the texts with their fictional, dramatic, or filmic counterparts), but it is rather an exploration of what is still a relatively underexplored aspect of the law and literature field(s): women and the law in contemporary literature and culture.

My interest in the field is as a literature specialist and a feminist, and I am particularly concerned with how women as subjects of courtroom dialogue and debate become translated into objects on display and with the ways in which their voices become contained or controlled by narratives to which they have only limited access. Carolyn Heilbrun and Judith Resnik, pioneers in the area of feminist law and literature, argue that the feminist branch of the field is particularly interested in women's *stories*: how they are told, what they might reveal or conversely conceal, and how shared or familiar tales intersect (in this, they have much in common with Critical Legal Scholars). Disappointed that much of this sharing of stories involves a

recitation of women's injuries and silences, they argue that feminist studies should instead explore women's "right to anger, their use of power . . . [and] their noncomplicity in the role of sex object."² This is a utopic desire. Indeed, one need only read the latest newspapers to discover that although one may prefer to read of women's power and success in the courtroom, one is confronted—as we shall see—with images of the mad, the bad, and the powerless instead.

That *the law* comes first in the law and literature movement is clear from a quick examination of much of the movement's critical work, and it is within this context that my introduction proceeds. It has become almost compulsory for law and literature books to start by exploring the rich, and sometimes beleaguered, history of the law and literature movement (such as it is), and so this book is no exception. The idea of a movement calling itself "law and literature" can be traced back to the early part of the twentieth century in an oft-quoted article by Benjamin Cardozo entitled "Law and Literature" (1925). The next significant text in the field was James Boyd White's *The Legal Imagination* (1973), which is most often seen as having kick-started the movement in its current formulation(s). Since then, the field has been divided into a variety of subsets, the most common of which are the "law as literature" and "law in literature" constructions. Richard Weisberg credits this division to Ephraim London, a New York lawyer.³ *Law as literature* is primarily concerned with the literary quality of the law, thus reading legal texts as literary texts, whereas *law in literature* focuses on how the law is depicted in literature itself, and this latter subfield is the main focus of this text.

More recently, Tony Sharpe has suggested two further categories: "literature as law" ("a competitive emulation of law by literature") and "literature in law" (the "comparison within a literary text, between legal methodology and its own ways of working").⁴ Sharpe's reformulation of the law and literature project is not meant to privilege literature, but to "consider some of the ways in which law has been misunderstood or misrepresented in literature."⁵ In this formulation, Sharpe follows in the footsteps of a high-profile critic of the law and literature movement: Richard Posner. Posner argues that "[t]here are better places to learn about law than novels—except perhaps to learn how

laymen react to law and lawyers.”⁶ Posner’s stance is particularly confrontational, but other critics welcome the way that law and literature find spaces in common. As Dieter Paul Polloczek argues, this might be particularly useful for liberal humanists or feminist critics who “continue to describe beneficial interactions, both historical and speculative, between judicial authority and literature, seeing both as performances of a communal rhetoric open to many voices, and in this sense capable of moral progress.”⁷ While this stance is perhaps idealistic—Richard Weisberg would characterize it as “sentimentalist”⁸—it does serve to highlight one way in which law and literature might be fruitfully joined with feminism, a possibility I explore in the pages and chapters to come.

A connection between literature and the law is certainly not new, as critics such as Robert Ferguson and Theodore Ziolkowski point out. Indeed, Ferguson outlines the historical trajectory of the law and letters interface. Arguing that lawyers “dominated” early American literary circles, Ferguson sets out the ways in which this was the case:

Half of the important critics of the day trained for law, and attorneys controlled many of the important journals. *Belles lettres* societies furnished the major basis of cultural concern for post-Revolutionary America; they depended heavily on the legal profession for their memberships. Lawyers also wrote many of the country’s first important novels, plays, and poems. No other vocational group, not even the ministry, matched their contribution.⁹

Yet Theodore Ziolkowski argues that the interdisciplinary practice of law and literature is “too fascinating and important to be conceded to the lawyers. Issues of law are so central to human society that they dominate many of the landmark works of Western literature and thereby have a claim on the attention of all educated people.”¹⁰ As a result, he coins his own interdisciplinary space as “literature and law” in a reversal of the usual order.¹¹ Indeed, of all designations, this might fit my own stance most clearly. It is certainly the case that literary critics have made important headway into the movement over the last few years, not least because their skills of narrative analysis are particularly well suited to the field. The journal *New Formations* dedicated an entire special volume, *Legal Fictions*, to the project in 1997. It is in focusing on narrative itself—the organization of story—that

4 Courting Failure

practitioners of law and literature have most in common. However, as Polloczek argues, the field continues to lack “interdisciplinary consensus” on “whether it is the approximation or the distance between law and literature that ought to be emphasized.”¹² In a separate but related argument, Willem J. Witteveen suggests that the present quest to expand the law and literature canon could lead to a fragmentation of a developing discipline (though, paradoxically, he also argues that the field should embrace additional kinds of texts, moving away from the standard focus on the novel).¹³

Jane Baron contends that the “multiplicity of approaches and concerns that leads some to see literature as a source of nearly endless possibilities may lead sceptics to dismiss law and literature as an empty vessel, a phrase devoid of content.”¹⁴ Baron argues that law and literature proponents (in her terminology, “law-and-lits”) fall into three basic camps: humanist law-and-lits, who think literature is good for lawyers; hermeneutic law-and-lits, who want to focus on literary theory and “interpretive methodologies borrowed from literary studies”; and narrative law-and-lits, who are interested in storytelling.¹⁵ There is certainly a well-developed strand of law and literature research which maintains that literature offers the lawyer an opportunity to become somehow better at his or her job, or that the teaching of literature is more than just an easy option for law students tired of the “harder” material.¹⁶ In relation to the second group, individuals like Sanford Levinson are frequently cited,¹⁷ and as an example of the last group, David R. Papke presents a range of legal storytelling in his edited collection *Narrative and Legal Discourse*. Well-known legal storytellers include Richard Delgado and Jerome Culp, among others.¹⁸ Baron finds fault with each of these approaches and also contends that “legal scholars seemed to have turned to literary studies just when there was the least consensus within the latter field about how to read.”¹⁹ She further argues that the “certainty with which legal scholars assert what are actually quite contestable readings is, thus, understandable, but still incongruous.”²⁰

One of the perennial problems of interdisciplinary study is that it is perplexing to see the use that nonspecialists make of your own specialism and to see or try to understand their understanding of the critical

debates in the subject that you more fully “own.” Indeed, to my eyes, a lot of the law and literature movement seriously misreads the nature of literary studies. A surprising emphasis is placed on either authorial intentionality or canonicity, with no or little awareness of how these ideas have been successfully challenged in literary studies. That judges must decide between competing interpretations and within a framework of historical narratives perhaps ensures this focus. At the same time, though, it remains somewhat surprising to see how literature is being referenced in texts edited in the late 1990s and beyond. Many law and literature texts resolutely refer to “the reader” as a generic “he,” an anachronism that has been successfully rooted out of most literary studies.

In addition, much of the law and literature field concentrates its debates on the so-called great works of literature: thus, contemporary texts, as well as texts by women, working-class writers, or ethnic minority writers, are only haphazardly addressed in textbooks aimed at a general law and literature audience. In the appendix to their 1991 article “Norms and Narratives: Can Judges Avoid Serious Moral Error?” Richard Delgado and Jean Stefancic note the numeric discrepancy between white men and white women considered part of the law and literature canon and argue that only two ethnic minority men figure, and no women.²¹ Although clearly such stark divisions have altered, the case for inclusion has by no means been won. Michele G. Falow, for example, in an article about great works, acknowledged that she selected her texts by canvassing the syllabuses of “top” colleges, thus inadvertently invoking elitist measures twice; admittedly, she acknowledges Toni Morrison’s *Beloved* as a canonical text, but her methods—apparently straightforward to her—reveal the same biases against women writers and writers of ethnic minorities in their comfortable retention of the status quo.²² In another example, a new coursebook, *Law and Popular Culture*, published in 2004, offered only a handful of pages on gender and feminism and even fewer pages on ethnicity, while purporting to offer a comprehensive account of how the law works in popular film. As a result, the law continues to be seen as a white male enterprise, with a few “others” mentioned as appropriate.²³ Feminist law and literature textbooks have rectified

some of these omissions, though they also often confine themselves to better-known works of literature. Darwinian notions of “survival of the fittest” appear to take the place of any serious analysis of why some works of literature are or remain marketable, while others, popular at the time of their appearance, disappear.

Ronald Dworkin, for example, puts forward an “aesthetic hypothesis” that suggests that critics are principally interested in offering an interpretation which shows the text in the best light.²⁴ Dworkin also values the literary canon, as well as “coherence or integrity in art.” He argues that “[a]n interpretation cannot make a work of art more distinguished if it makes a large part of the text irrelevant, or much of the incident accidental,”²⁵ and yet, few literary critics would argue that their primary role is that of enhancing a work of art (though, admittedly, many feminist critics such as myself wish to rescue texts that have been critically overlooked, often because of their contestatory politics). Even fewer would suggest that a literary text has to be taken in its entirety in order to be valuable; in relation to Angela Carter’s fantastical narrative *Nights at the Circus*, for example (analyzed in chapter 1), I refer to only one small section: the prison scene that itself does seem almost incidental to the wider narrative, but that offers a telling exploration of the panopticon, an important image or structure in women’s literature.

In the introduction to *The Mirror of Justice: Literary Reflections of Legal Crises*, Ziolkowski states that he does not wish to “engage in the polemics that enliven many of the contributions to Law and Literature,”²⁶ and despite my concerns noted above, this is a feeling I share. Indeed, a surprising number of law and literature articles appear to cite disputes and critical contests with other critics—which may be a measure of their lawyerly nature. Examples of such critical disagreements abound, but the most commonly cited ones include Richard Posner on Richard Weisberg; Stanley Fish, Robin West, and Weisberg on Posner; and Weisberg on “feminists” and “postmodernists.” Nevertheless, it is important to recognize that law and literature experts do not speak with one voice, and that my own voice is at odds with some of the leaders in the field, namely Weisberg and Posner (who, as I note above, are themselves at odds with each other). In order to set

out my critical stall (as it were), it will then be necessary for me to explore how these critics address the law and literature interface and to look at some of the issues that this interdiscipline faces and reacts to and against (including feminism and the politics of storytelling), before concluding with a case study of Morley Callaghan's short story, "A Wedding-Dress," which has also been ably explored by the law and literature critic Gary Boire.

*In the Name of the Father:
Weisberg and Posner on the Canon*

Resistance to or ignorance of feminist concerns is evident in much law and literature scholarship, particularly from scholars who see either canonicity or intentionality as the mainstays of the field. Out of the twenty-five texts that Barry R. Schaller discussed at length and accorded abbreviated titles in *A Vision of American Law*, only one, Joyce Carol Oates's *them*, was by a woman. Schaller argues that he "began to search for meanings that would bring coherence and clarity to a story of law and culture."²⁷ Clearly, "clarity" and coherence are possible only if one does not acknowledge the female. Schaller is certainly not the only law and literature critic to ignore or sideline the female; it is an unfortunate element of the field, particularly in relation to two scholars, Weisberg and Posner, who stand out both for their impact on law and literature and for their resistance to claims from outsider voices.

Richard Weisberg is one of the leading proponents of law and literature (in old critical terms, a founding father), and I admire Weisberg's commitment to the field, if not his convictions. He is, for example, an editor of one of only two law and literature journals, launched as *Cardozo Studies in Law and Literature* but now simply entitled *Law and Literature*. He is also the author of many articles in the field, frequently a guest speaker at law and literature conferences (indeed, he presented a keynote address at the Law and Literature conference in Nice in 2001 that inaugurated my own participation in the field), and has written two major texts: *The Failure of the Word: The Lawyer as Protagonist in Modern Fiction* (Yale University Press, 1984) and

Poethics and Other Strategies of Law and Literature (Columbia, 1992). It is the latter text which interests me here.

Weisberg is a fan of the “Great Books” tradition and justifies his exclusive focus on the canon as a pedagogical one: it is justified in the sense that working on major texts is the first step toward incorporating difference and opening up the canon for new voices. However, as Gaurav Desai, Felipe Smith, and Supriya Nair argue, “judging by his later work, it does not seem that Weisberg thinks that the time is right even now to fully integrate any of these ‘lesser-known voices.’”²⁸ Moreover, in relation to all outsider voices but especially in relation to the voices of ethnic minority writers, they argue that “most of the work in this area currently speaks more to the struggle to be heard rather than to resounding success.”²⁹

In this exploration of poetic ethics, Weisberg sticks primarily to “establishment male authors” but argues that this “hardly denotes acceptance of the traditional canon when the male narrative enterprise itself is being criticized for its violence and its twisting of the truth.”³⁰ This seems a curious argument, and Weisberg’s reluctance to engage with outsider narratives is disappointing. He argues that “even when treating male-authored texts, some of which have no female characters, the Law and Literature syllabus still raises many issues of concern to feminists.”³¹ This is no doubt true, but it does not excuse the lack of representation he promotes. As Desai, Smith, and Nair argue, “the ideal scenario is one in which there is a balance between a number of critical approaches and a diverse range of texts. Readings of the traditional canon that approach it from feminist or race-conscious perspectives are, of course, a very important aspect of literary scholarship. But they cannot be held to be sufficient.”³²

Throughout, Weisberg references “law” rather than “the law,” as if law is a person whose name can be called. The name is, however, always the name of the father. In the preface to *Poethics*, Weisberg vilifies his fellow law and literature critics Posner and James Boyd White, but also lists, on his dedication page, ten “lifelong friends,” all male. Against this list, in the edition shelved at the University of Toronto’s Robarts Library, a (presumably) female reader has scrawled, “Watch out for girl germs.”³³ Indeed, this delightfully subversive com-

ment resonates almost as much as Weisberg's own words, and offers a sort of (dis)authorizing gloss that disables the premises on which it is formed.

When answering the criticism that law and literature has failed to embrace or even engage with contemporary literary theory, Weisberg disingenuously argues that leveling this criticism is much like criticizing Freud for not taking on Marx. Further, he argues, "it cannot fairly be resented of one progressive line of thinking that it pays scant attention to other contemporaneous innovators."³⁴ Such an argument is a critical sleight of hand, for the movement itself, in its very name, embraces literature. To then deny the last twenty years of literary theory in this "new" discipline is not only deceitful but regressive.

In an article published in 1999, Weisberg reiterates many of his previous points, but goes even further in his antipathy toward feminists and postmodernists. He suggests that "for twenty or twenty-five years, lawyers interested in stories have sustained the unfashionable position—anathema even or especially to literary theorists—that the single text or collection of texts both exists and can be referenced to the real world."³⁵ This stubborn refusal to see that challenging the canon does not amount to challenging the existence of texts *per se* is disingenuous again. Moreover, as has been noted above, many branches of feminist criticism hold fast to a notion of correspondence between the literary and real worlds (if not, it has to be stressed, to a naïve notion of transparency).

Weisberg's offhand remarks about feminists need no further exploration here: but his is one voice that is implicitly contested in the writing of this book, which focuses on the textual representation of women's voices. I offer analysis of texts by both men and women (refusing the gender separatism practiced elsewhere in the recognition that separate is never equal). It is true that the great preponderance of my analysis focuses on women's literature, but this is because more women than men have been proactively feminist. Some of the texts I analyze are well known (indeed, almost "canonical"), and others are more recent and less often critiqued. I believe (to misquote Weisberg's stance) that even when treating female-authored texts, some of which focus only fleetingly on male characters, the law and

literature movement still raises many issues of concern to all law and literature experts, feminists and nonfeminists alike. In this respect, I follow Weisberg's call to "make the reader uneasy about the legal assumptions that preceded the understanding of the story,"³⁶ though surely to different ends. As Jacqueline St. Joan remarks, "in interpreting testimony, weighing evidence, and assessing credibility, judges are most likely to rely on the dominant perspective not only because it is the most familiar, but also because legal precedent usually is grounded in that point of view."³⁷ My text is one that offers a chance to look from a different point of view: one that highlights and foregrounds women's myriad and differently experienced encounters with the law.

In the preface to his revised edition of *Law and Literature* (1998), Richard Posner comments that American law has "troubled encounters" with women and those whom he terms "blacks."³⁸ If American law cannot successfully or appropriately deal with half the population (taking, in this instance, the "plight" of women alone), then surely this says something about the way in which the law works (or doesn't work). The fact that this statement can be made at all reveals the battle which faces the feminist and/or race-conscious critic of legal and literary studies. Posner is, by all accounts, the most frequently cited law and literature critic, an ironic fact given his stiff (and I use the term advisedly) criticism of the project. He characterizes the movement as "full of false starts, tendentious interpretations, shallow polemics, glib generalizations, and superficial insights."³⁹ In this, of course, it has much in common with any discipline, and this is thus no real criticism at all. Posner suggests that it is acceptable to take different critical stances toward each half of this "and" subject: "Law is a system of social control as well as a body of texts, and its operation is illuminated by the social sciences and judged by ethical criteria. Literature is an art, and the best methods for interpreting and evaluating it are aesthetic. There is no inconsistency between being a formalist in literature and an antiformalist, a pragmatist, in law—which happens to be my position."⁴⁰ There may well be no inconsistency here, but again, we find that the emphasis on aesthetics leaves little room for other forms of critical intervention into the arts. Moreover, Posner, like Weisberg, is critical of a variety of well-established schools of

critical thought. He indiscriminately lumps together critics whom he sees as having a “radical bent” under the term “postmodernists”; this grouping includes critics employing “neo-Marxism, radical feminism, critical theory and poststructuralism,”⁴¹ a combination that would surprise, if not in some instances dismay, many of the diverse scholars who take up these various positions.

Posner, to give him credit, does acknowledge that in relation to the canon, the Darwinian notion of survival of the fittest may have more to do with chance and circumstance than with “good literature,” but this is a minor concession.⁴² He is, moreover, suspicious of popular culture.

It is, however, in his suspicion of feminism that we most clearly part ways. Consider the following quotation: “Feminist literary critics are trying to boost the reputation of a number of women writers, some hitherto unknown, but it is too early to say whether their efforts will succeed.”⁴³ When he argues that feminists are “trying to boost” women’s literary reputations, he clearly means they are not quite achieving it. When he cites “a number of women writers” but offers no names, he is clearly dismissive of the project, and when he assigns to an imaginary future the end results of such efforts, he denies the very real progress made by feminists in re-visioning the canon and/or dismantling the concept altogether.

This is not to say that Posner is all wrong; occasionally he offers useful gems, and his writing has a clarity that many critics would do well to emulate. But his story of the law is not my story; it is not, on the whole, the story of contemporary texts or writing about and by women, and it is necessary to break free from the rather limited canon of texts that characterize early (and some later) versions of the law and literature movement. Critical studies such as those undertaken by Elizabeth Villiers Gemmette prove that the preponderance of texts analyzed in law and literature courses are written by white men of European descent;⁴⁴ even here, though, such evidence is read in opposing ways, reminding us of Stanley Fish’s argument that it is “entirely possible that the parties to our imagined dispute might find themselves pointing to the same ‘stretch of language’ (no longer the same, since each would be characterizing it differently) and claiming

it as a 'fact' in support of opposing interpretations."⁴⁵ In this instance, we have Weisberg pointing to Gemmette's second study as evidence of the health of law and literature as a movement, whereas Judith Resnik sees in this study the critical preponderance of canonicity.⁴⁶

Law and literature critics must continue to challenge their own critical enterprise and continue to find new ways to engage with texts from outside the canon: texts by African Americans, by women of all ethnicities, and by writers from the late twentieth century and beyond. The powerful work of feminist critics such as Judith Resnik, the late Carolyn Heilbrun, Robin West, Martha Albertson Fineman, Maria Aristodemou, and Patricia Williams, to name but a few, is helping to shape feminist law and literature, and it is to the questions and debates of this field that I now turn.

Gender: What Difference Does it Make?

Feminist law and literature is a field that, in some ways, replicates issues that have been prominent in feminist literary studies for some time: voice versus silence, the performance and punishment of femininity, the right to anger, and the consequences of stepping outside of prescribed gender roles. Feminist law and literature critics take a variety of stances in relation to this hyphenated discipline, from liberal-humanist calls for equality under the law, to recognitions that equality may not, in fact, be the solution at all. Michael Thomson argues that "there has been minimal feminist engagement with this field of scholarship. Indeed, the interaction between feminism and law and literature has been, at best, hesitant, tentative."⁴⁷ Such a criticism is both unfounded and quite clearly gendered. Here, feminists themselves are rendered unsure, quiet, small: characteristics frequently associated with women for the purposes, overt or concealed, of disabling their authority. Yet as authors *and* authorities, women have been very vocal about the challenges facing law and literature, as well as their disappointment that changes are not occurring fast enough. Marie Ashe, Jane Baron, Elizabeth Villiers Gemmette, and Carol Sanger are but a few of the prolific women writing on a range of law and literature topics; as Sanger remarks, in relation to the short story "A Jury of Her Peers" but with equal applicability to the entire law

and literature enterprise, “what we are able to see is often not a matter of what is before us, but of the particular qualities of the lens we choose for the examination.”⁴⁸

In her essay “Economic Man and Literary Woman: One Contrast,” Robin West boldly announces: “I use the word ‘woman’ to include men as well as women, ‘she’ to include the male pronoun, and ‘womankind’ to include mankind.”⁴⁹ Thus for West, the literary woman is a figure who encompasses both men and women in a reversal of the usual gendering of the anonymous. Such a bold critical stance moves beyond the token gesture of referring to the reader as “she” throughout an article, and by this I don’t mean to undervalue the importance of this tactic for raising awareness. What I am suggesting is that West’s terminology requires readers to engage in a radical rethink; by using the literary woman trope insistently, West constantly draws attention to gender, even as she is, apparently, erasing it. This erasure of gender is thus fundamentally different from the erasure of gender that the figure of blind justice suggests; in the courtroom, to ignore gender (as to ignore ethnicity, sexual preference, class, and other identity markers) is *sometimes* to cause harm. As Catherine MacKinnon powerfully argues,

Inequality is treating someone differently if one is the same, the same if one is different. Unquestioned is how difference is socially created or defined, who sets the point of reference for sameness, or the comparative empirical approach itself. Why should anyone have to be like white men to get what they have, given that white men do not have to be like anyone except each other to have it? Since men have defined women as different to the extent they are female, can women be entitled to equal treatment only to the extent they are not women?⁵⁰

This book comes of a struggle to adapt to and understand a post-egalitarian feminist stance. My liberal Anglo-American feminism—a feminism that seeks equal treatment under law and in society, and reevaluates female contributions to the arts and science—has been challenged on a number of fronts during the course of my research: from revisionist feminists who dismiss the feminism of the 1970s and 1980s that shaped my intellectual heritage as somehow “essentialist”; from feminists who have almost insistently picked at the evidence of their own blindness, particularly around ethnicity and race consciousness (but, as with scabs, such picking might simply create scars rather

than heal differences); and from postegalitarian feminists who suggest that women are indeed different—not only from each other but, more importantly, from men—and thus need a different legal system, too.

Noting that the law is “a system of rules and norms, many of which are designed to have universal application,” Martha Fineman argues that what is in fact needed is a nonuniversal application.⁵¹ Specifically, she argues that “[n]eutral treatment in a gendered world or within a gendered institution does not operate in a neutral manner. There are more and more empirical studies that indicate that women’s relative positions have worsened in our new ungendered doctrinal world.”⁵² Such a “postegalitarian” stance, where equity and not equality under the law is what is at stake, is a complex and admittedly problematic stance. If women constitute a special case, in what ways do they do so, and in what ways don’t they? And does such a position argue—untenably—that all women are the same, and that they experience the same harms in the same way? Such questions are at the heart of a feminist analysis of law and literature.

Ellen Adelberg and Claudia Currie argue that formal “gender neutrality” should be replaced by “gender sensitivity.”⁵³ Such a sensitivity should—and in many cases does—go hand in hand with a recognition of other identity markers as equally important, markers of ethnicity, class, and sexual orientation. As Frances Olsen carefully points out, “The issue between sameness and difference depends entirely upon context. Women can be oppressed by same treatment and they can be oppressed by different treatment. In some contexts differences should be deemphasised; in other contexts it would make no sense to do so.”⁵⁴ One critic who has been particularly strong in this field is the criminologist Carol Smart. Instead of focusing on the idea that law is sexist, or male, Smart prefers the notion that law is gendered, which means that “we can begin to see the way in which law insists on a specific version of gender differentiation, without having to posit our own form of differentiation as some kind of starting or finishing point.” She has famously concluded that “Woman is a gendered subject position which legal discourse brings into being.” Smart further argues that “[i]t is this Woman of legal discourse that feminism must continue to deconstruct but without creating a nor-

mative Woman who reimposes a homogeneity which is all too often cast in our own privileged, white likeness.”⁵⁵

According to Smart, law produces polarized and specific gender differences.⁵⁶ What is clear is that women *are* treated differently from men under the law, despite assurances otherwise, and often (though not always) to their detriment. Certainly critics have posited a “chivalry” argument that suggests that female criminals benefit from the judicial system’s inability to see a feminine woman as truly capable of or culpable for violence, with the result that their sentences are sometimes lighter than those handed down for men. As Helen Birch argues, “the judicial system, reflecting the attitudes of society as a whole, often punishes women who step beyond the bounds of acceptable female behaviour, while demonstrating a chivalric, paternal attitude to those whose acts of violence can apparently be explained by reference to their hormones (biology) or emotions (irrationality).”⁵⁷

Studies have shown that particularly in relation to child deaths, “[m]others were less likely than fathers to be convicted of murder or to be sentenced to imprisonment, and were more likely to be given probation and psychiatrist dispositions.”⁵⁸ Anne Worrall argues that women who do receive lighter sentences enter into a sort of quasi contract, whereby they let their lives be defined and represented “primarily in terms of [their] domestic, sexual, and pathological dimensions.”⁵⁹ Such a strategy sometimes works, with fines and probation orders given where custodial sentences might be imposed; other times, when women are defined as unnatural or ill-suited for domestic duties, they actually find that this “contract” works against them.

Women who are violent are particularly at risk of this misreading. Allison Morris and Ania Wilczynski suggest that “[v]iolent women are usually presented by [criminologists] as ‘evil’—they have chosen to act in a way which contradicts traditional views of women; as ‘masculine’—they are not ‘really’ women; as ‘sad’—they could not cope with social pressures; or as ‘mad’—they did not really know what they were doing.”⁶⁰ These characteristics recur with regularity in texts about women, and even feminists are not entirely immune from shorthand explanations for women’s (still aberrant) violence: “Feminists too seem puzzled about how they should respond to women’s

violence. . . . [T]hey seem unsure whether it betrays or supports feminist causes.”⁶¹

This may be because the violent female criminal remains surprisingly rare. In a September 2002 trawl of the *LexisNexis* online network, the simple inputting of “women and crime” netted more results than the system could handle (any search that generates more than a thousand results is automatically redirected for further refinement). Even when I limited the search in a variety of ways, the result was the same. This was, apparently, a hot topic. When I changed the keywords to “female criminals,” though, I found only seven recent news reports, of which only three dealt with “real-life” crime (the rest were film, stage, or book reviews). Of the three, one was focused on the “special needs” of female offenders, another on a specific, high-profile case in which a woman was an alleged accomplice to a child murderer, and the final was a sort of twenty-first-century emotional phrenology course in which “criminal types”—both men and women—were identified. In this admittedly unscientific polling, the female criminal does not really exist. She is a phantasm, created by authors and scriptwriters, and the (too large to quantify) connection between women and crime is one of victimhood. Even when statistics about the rise in female violence shock us (in the United Kingdom, this has been insistently linked in newspaper accounts to the loosening of moral prohibitions against excessive alcohol intake), the reality is that with such low numbers of violent incidents reported, any rise can look astronomical. The fact that the number of female prisoners in the United Kingdom rose by 173 percent since 1992 is shocking; that in July 2004 there were only 4,487 women in prison puts that figure into perspective, particularly as another statistic shows that women account for only 6.1 percent of the U.K. prison population. Of this 6.1 percent, only 17 percent were imprisoned for violent crimes.⁶² Although the raw numbers of U.S. women imprisoned are significantly higher than U.K. numbers, female offenders represent only about 1 percent of the population of U.S. women as a whole.⁶³

Yet women continue to be fodder for what Sarah Wight and Alice Myers call “excessive storytelling about women’s violence”; they

argue that press reports of high-profile cases (examples include Myra Hindley and Rose West in the United Kingdom; Aileen Wuornos and Karla Faye Baker in the United States; and Karla Homolka in Canada), as well as films and novels about female criminals, “can be seen as a symptom of social anxiety about women’s roles and the perceived abandonment of traditional femininity.”⁶⁴ The role that perceptions of femininity plays in the courtroom is a crucial aspect of this text. In their article “Convergences: Law, Literature, and Feminism,” Heilbrun and Resnik explored the case of *Dixon vs. the United States*, in which a pregnant young woman killed her husband and claimed self-defense (a defense which, to a lay person, seems utterly justified. He was drunk, high on PCP, and wielding an iron bar, threatening both Evelyn Dixon and her mother, when Ms. Dixon stabbed him in the chest. It may be worth noting that Ms. Dixon was all of four foot nine). Heilbrun and Resnik note that “[d]uring the trial, the prosecutor reminded the jury several times that Ms. Dixon had not appeared teary, helpless or fearful when she spoke to the police after her husband’s death.”⁶⁵ They therefore ask, “How much was the jury that decided the case affected by the police and prosecutor’s report that Ms. Dixon failed, when speaking about her husband’s death, to appear conventionally female, that she did not cry, did not seem as helpless or distraught as might have been expected?”⁶⁶ Apparently, Dixon’s real crime is her distance from societally acceptable femininity—a factor that is reiterated in almost all of the chapters that follow, whether in relation to real-life cases such as Aileen Wuornos’s trial, or fictional cases where women do not act (and therefore are not?) like stereotypical women.

The performance and punishment of femininity is thus one strand that this feminist law and literature text explores. Another equally important strand is the way in which women’s harms are misrecognized and misidentified by the law and those charged with upholding it. Robin West explores in full the way in which this might occur and suggests that, because of their differing experiences, women and men lead essentially different kinds of lives. She argues that men face sporadic violence while women face pervasive violence, or fear of violence, and that this has an effect on patterns of behavior: “one

responds to pervasive fear and pervasive threat not by changing one's behavior, but by redefining oneself."⁶⁷ West further argues that both liberal and radical feminists, by focusing on the first half of the term that describes them, unwittingly deny or downplay the plight of women. West argues that liberal feminists, whose goal is equality, do not recognize that women often act in order not to increase their own happiness, but to increase the happiness of others. Thus, she contrasts the liberal self (male) with the "giving self" (female): "women define themselves as giving selves so as to obviate the threat, the danger, the pain, and the fear of being self-regarding selves from whom their sexuality is taken."⁶⁸

West argues that even feminist victories result sometimes in oxymorons, and she uses as examples the terms "date rape" and "sexual harassment." West deconstructs the link between pleasure ("date," "sexual") and pain ("rape," "harassment") to offer proof of a gendered (legal) view of the world.⁶⁹ Finally, in an oft-quoted passage, West starkly sets out the way that the law is stacked against a real understanding of women's experiences:

Thus, women's distinctive, gender-specific injuries are now or have in the recent past been variously dismissed as trivial (sexual harassment on the street); consensual (sexual harassment on the job); humorous (nonviolent marital rape); participatory, subconsciously wanted or self-induced (father/daughter incest); natural or biological, and therefore inevitable (childbirth); sporadic, and conceptually continuous with gender-neutral pain (rape, viewed as a crime of violence); deserved or private (domestic violence); nonexistent (pornography); incomprehensible (unpleasant and unwanted consensual sex) or legally predetermined (marital rape, in states with the marital exemption).⁷⁰

As if in agreement, Resnik notes that "[a]s women make visible a distinctive array of experiences and then gain power to alter laws and reframe contexts, counterclaims of neutrality and timeless truths attempt to quiet these voices and diminish their power."⁷¹ It is at this point that a postegalitarian stance is most needed. It is also at this point, to follow from Resnik's earlier work with Heilbrun, that the call to listen to women's stories must continue to be heard.

Perhaps one of the best-known legal storytellers is Patricia J. Williams, whose ground-breaking book, *The Alchemy of Race and*

Rights (1991), struggled to articulate the way in which gender and ethnicity are inevitably intertwined and contested parts of identity. Williams's book offers a personal account of encounters with the law, both inside and outside the classroom. Williams argues that law schools invoke issues of race, gender, and class in apparent response to feminist and other concerns, but that they do so in ways that maintain the hegemony of privilege. Moreover, she argues that gratuitous insertions of these factors into law exams, insertions that offer up stereotypical portraits of black perpetrators and white victims, amount to "a deep misunderstanding of the struggle, a misunderstanding that threatens to turn the quest for empowering experiential narrative into permission for the most blatant expressions of cynical stereotypification."⁷² At the same time, Williams contends that scholars must take the risk of rejecting impersonal writing styles if they want transformation: "I also believe that the personal is not the same as "private": the personal is often highly particular. I think the personal has fallen into disrepute as sloppy because we have lost the courage and vocabulary to describe it in the face of the enormous social pressure to 'keep it to ourselves' — but this is where our most idealistic and our deadliest politics are lodged, and are revealed."⁷³ This form of scholarship is not without its detractors: Anne Coughlin, for example, questions the viability of "outsider scholarship," which attempts to insert personal narratives in order to disrupt the law's seeming objectivity. While recognizing some benefits of (or arguments for) outsider scholarship—the name given to scholarship from those who claim that their voice is rarely heard under the law—Coughlin is hard on the scholars who promote either outsider scholarship or autobiographical narrative as a radical way forward.⁷⁴ Coughlin's argument is that "reliance on the narrative form is problematic for those pursuing a radical social agenda, for some theorists have argued that narrative is made possible by and inevitably reinforces the reigning system of law."⁷⁵

Clearly, not all feminists think alike, and some even deny the applicability of the term (West, for example, claims a humanist stance in *Narrative, Authority, and Law*). Others decry the "failures" of feminist movements: one such critic is Thérèse Murphy, whose blunt article is scathing about critics who cannot deal with the "sexed body";

her approach seemingly blames the victim in many respects, however, and remains problematic as a result.⁷⁶ Thus, in taking a postegalitarian feminist stance in this text, I am not assuming that women speak with the same voice, merely that their many voices need to be heard—and even contested. I will draw on many feminist voices (and some which claim no allegiance to feminism) in my book because I still believe in Annette Kolodny's "playful pluralism" as the best way forward for feminist thinking.⁷⁷ In her award-winning essay from 1979, "Dancing through the Minefield," Kolodny argues that such a stance means that feminists can "enter a dialectical process of examining, testing, even trying out the contexts—be they prior critical assumptions or explicitly stated ideological stances (or some combination of the two)—that lead to disparate readings."⁷⁸

Despite their opposing stances, then, what Williams and Coughlin agree on is the relationship between narrative and law: law as a story. Where they differ is in how such stories can be told, and whether the old cry "the personal is political" has any merit whatsoever. I understand Coughlin's objections: personal narratives are not automatically radical or disruptive, and too often they can simply reinforce the status quo. As Resnik has argued, it is all too easy to disregard stories by means of "discounting" the importance of the story or "discrediting" its source: "An individual story can be rejected based on a belief that it is not true, or, if true, not troubling, or if troubling, not common but a singular event that is aberrant rather than abhorrent. In contrast, to discredit a story is always to attempt affirmatively to dislodge authority."⁷⁹

Too often, as Resnik has noted throughout her scholarship, it is the woman's story that is denied and the woman herself who is discredited. Or, as Kim Lane Scheppele argues, "the 'we' constructed in legal accounts has a distinctive selectivity, one that tends to adopt the stories of those who are white and privileged and male and lawyers, while casting aside the stories and experiences of people of color, of the poor, of women, of those who cannot describe their experiences in the language of the law."⁸⁰ Scheppele is concerned with the experience of those whose stories are disbelieved, suggesting that they "live in a legally sanctioned 'reality' that does not match their percep-

tions.”⁸¹ It is in this context that one can explore the fictional or fictionalized stories of women’s encounters with the law. Taking as a starting point either the disbelief accorded the woman before the court or her own self-censorship about her experiences, I argue that twentieth-century writers from the United States, Canada, and Britain imagine fates for their heroines which rely on silence and gaps, which explore the stories that cannot be told. As Maria Aristodemou argues, “To interrogate the messages created and inscribed by both legal and literary fictions we must go back not only to the narratives they tell but to the language they employ to tell their stories.”⁸² Ironically, many of these tales invoke silence as a defining feature and render the primary subject mute; as a result, issues of guilt and innocence become related less to actual crimes than to the perceived relinquishing of the “feminine.” Moreover, guilt is sometimes assigned as a cover for another, possibly less acceptable crime. A case in point is Morley Callaghan’s “A Wedding-Dress,” which acts here as a short case study.⁸³

“A Wedding-Dress”: A Tale of Legal Desire

Gary Boire argues that Morley’s short story “ironizes the sentimental tale, vignette, and sketch” while simultaneously functioning as “an exercise in sexist pathos.”⁸⁴ In it, Lena Schwartz is a woman who has been engaged for fifteen years, awaiting her lover’s ability to support her financially: she is constantly in the state of deferral, of void, as she awaits the beginning of her tale. When her lover finally lands a good job, she lands in prison—accused of stealing a dress from a department store. She wears the dress itself to the prison cell and in court the next day; thus, there is no doubt about her guilt. (Here, as in the fiction that I explore throughout *Courting Failure*, appearances matter.) But what is she actually guilty of? Theft, according to the store detective; temporary kleptomania, according to her lawyer. But her guilt is, in fact, related less to her “crime” than to her desire: to be beautiful, admired, and desired herself.

This sparse short story enacts a tale of compulsory heterosexuality and delineates the regulation of female desire; indeed, it appears that

this is the whole premise of the law in relation to Lena Schwartz. She is called an “old maid” four times in the five-page text, her unmarried state a matter for prurient rumination and disapproval. She is called an old maid first by men at a boardinghouse, who salaciously suggest that “it” is about to “happen to her” at long last; second, by a “saucy-looking” salesgirl who is set up in opposition to her as a young, desirable woman (at thirty-two, Lena is no longer considered remotely desirable herself); third, by a sergeant who feels that being an “old maid” is reason enough to keep her in cells overnight, since old maids tend to be “foxy”—in the wily sense, of course, not the sexual one. The “wisdom” that accrues to the (slightly) older woman cannot coexist with sexuality in the narratives that seek to set up women in binary opposition to each other. Finally, she is called an old maid by the magistrate, who notes that the dress that she has stolen “doesn’t even look good on her” (57); thus, the theft itself is doubly inappropriate. However, he is lenient enough to let her go, so long as her fiancé pays for the dress and promises to marry her. Clearly, once she moves from the position of single (unrestrained?) woman, she will no longer be a threat. She will be containable and indeed renamed: no longer an old maid, no longer Miss Schwartz.

It is a slight story, almost dry in its narration, and unlikely to arouse great sympathy or intense feeling. Yet, as Boire comments, the text itself simultaneously hides and un.masks signs of Lena’s sexuality “as a potentially unruly force—a force that she herself finds alienating”—indeed unspeakable.⁸⁵ After such a long wait to get married (in traditional narrative terms, to either begin her story or to end it), Lena is denied a voice in the text even as her body enacts covert sexual messages. She intends to buy a “charming” but “serviceable” dress for her long-awaited wedding, yet confronted with just such a dress, she is disappointed. The dress she envisions is one that will “keep alive the tempestuous feeling in her body,” a dress which will “startle” her fiancé, but more importantly, perhaps, make her “wantonly attractive” and “slyly watched” by other men (54). Lena herself appears unaware of the contradictions of her desires. However, once she surreptitiously slips the dress into her coat, she feels “a guilty feeling of satisfied exhaustion” (54, 55), a reaction that can clearly be read as sex-

ual orgasm. Moreover, she feels almost immediate regret, crying because she doesn't know how to return the dress: that is, return to her previous, unblemished (virgin?) existence. It is no coincidence that the dress is "loose" on her, as it represents metonymically her own imagined state.

The law is not long in getting involved in regulating Lena's desire, and from the moment she is arrested, she is told not to speak. As the sergeant who picks her up says, "it won't do any good to talk about it" (56). Despite this prohibition, Lena speaks "almost garrulously," according to the text, but we as readers are denied her words. Moreover, her lawyer never engages her in conversation; instead, he consults her fiancé and argues for clemency on the basis of her long wait for marriage. Her fiancé also speaks *for* rather than *to* her, calling her "a good woman, a very good woman" (58), containing her within a proper, gendered space.

"What makes Lena Schwartz's trial so interesting," according to Boire, "is that it functions within the story, not simply as a tragi-comic resolution, but as a male-centred normalizing ritual."⁸⁶ With only men speaking, and only their thoughts recorded—apart from a brief, if telling, note that Lena felt "strong and resentful" (57)—the trial becomes a series of conversations within which the principal subject is excluded, indeed, almost invisible. The actants in the courtroom find Lena amusing or pathetic, and Lena herself becomes little more than a cipher. As Boire comments, "Whereas up to this point Lena has been portrayed as a sexualized body whose energy is potentially transgressive (indeed wanton!), here in the legal rituals of normalization her desires are placed squarely back within the confines of a mandated heterosexual marriage."⁸⁷

This is in marked contrast to the other woman who is on trial that day, a "coloured woman" accused of running a bawdy-house, who "went to jail for two months rather than pay a fine of \$200" (57). Of the fate of the male prisoners who share Lena's journey from prison to courtroom—a bigamist, a betting shop owner, and a drunk—we hear nothing. What we do have recorded is the fact that the female is put away, her "sexuality" reduced to commerce and further connected with money through an imposed fine, or sent away—into a mar-

riage that is intended to sublimate her unruly passions. What is also clear is that the brothel madam, a woman who commodifies the female body and who may thus invoke our moral disapproval, is allowed to *choose* her fate, whereas the old maid Lena's fate is chosen for her. In this way, then, it appears that stepping outside of "proper" gender roles (and, of course, the madam's ethnicity cannot be ignored) can potentially afford more space for movement. This reading reveals the text as a subversive one which undermines the law and the societal rules that it apparently upholds.

According to Boire, "the very prevalence of legal imagery suggests that when Callaghan 'reads' the world (and therefore its language) in his writing, he simultaneously 'reads' and interrogates their organization by means of power relations, by means of legal formulae."⁸⁸ In "A Wedding-Dress," this results in a text in which a real crime (theft) stands in for a seemingly more disturbing and indeed disruptive "crime" (female sexuality). The court enforces repression and boundaries (as part of her release, Lena is forbidden to shop for a year) and in doing so, reestablishes "appropriate" power relations. The text ends, "and they went out to be quietly married"—no doubt to live "happily ever after." "A Wedding-Dress" is a legal fairy tale, in which the heroine is tempted from the path, comes to potential harm, but is rescued by her handsome prince and led back to safety.

Taking on Weisberg's claim that it is possible to read for feminist messages in male-authored texts, "A Wedding-Dress" proves his point (and indeed many feminists have made this critical claim more eloquently and more persuasively than Weisberg). But Morley's text—like the plays, novels, and films that follow—focuses on the female, on her experience of or relation to the law. If she is sidelined (as clearly in the text she is, despite being its protagonist), then this sidelining has a political import.

In the chapters that follow, I explore more closely a range of issues to do with women and the law, returning to the critical debates about how the figure of the (fictional) woman is constructed, how her crimes and misdemeanors are detailed, and how she relates to the embodied lives of contemporary women. Because we trace much of our legal and literary understandings back to previous centuries, I felt

it was necessary to explore, in chapter 1, how twentieth-century authors recalled and reinvented nineteenth-century concerns over women's legal culpabilities. Focusing on representations of the panopticon, as well as Foucauldian and feminist readings of this space, chapter 1 examines Angela Carter's *Nights at the Circus* (1984), Margaret Atwood's *Alias Grace* (1996), and Sarah Waters's *Affinity* (1999) as texts that explore appearance and the construction of the (legal) gaze. Given the role that surveillance—whether real or imagined—plays in women's lives, the focus of this chapter is on the disciplinary gaze of the authorities and of institutions of correction. Carter, Atwood, and Waters, however, subvert the hierarchical notion of powerless prisoners and powerful authorities. The women inmates in these texts find ways to wrest control from those who seemingly have power over them. Each of these texts is a reconstruction of nineteenth-century imprisonment, and I explore how writers make use of “real” sites—Millbank Prison in London, Kingston Penitentiary in Ontario, Canada—to write beyond the ending of women's imprisonment and see beyond the panoptical gaze that initially appears inescapable.

Chapter 2 follows logically from chapter 1 and also focuses on twentieth-century texts that reconstruct or mimic nineteenth-century ones. In this chapter, however, I explore “neoslave narratives,” texts that offer voice to the disenfranchised, the dehumanized, and the brutalized, and that recall the authentic slave narratives of earlier centuries. This chapter examines how African American women have been historically viewed as “property” and the ways in which their family lives have been constructed around the selling and buying of human beings. Thus, it necessarily engages with constructions of family, and especially the role of motherhood, in a system that denied blood relations and treated human beings as chattel. As one of the characters in Toni Morrison's *Beloved* (1987) reveals, “What she called the nastiness of life was the shock she received upon learning that nobody stopped playing checkers just because the pieces included her children.”⁸⁹ *Beloved* is a reworking of the “story” of the historical Margaret Garner. Other fictional slave narratives explored in chapter 2 include J. California Cooper's *Family* (1991), Sherley Anne Williams's *Dessa Rose* (1986), and Valerie Martin's *Property* (2003).

These novels all explore legal and extralegal remedies for violence, the misnaming of humans as chattel, and covert theft versus property rights; each also ensures that the female slave is offered at least a partial voice. Williams's novel, like Morrison's, is partly based on authentic slave experiences and offers a fictionalized account of what might have happened if two historical women—a pregnant slave awaiting the death penalty and a white woman harboring runaways—had met; the novel is also a writing back against the misnaming of the slave experience. Cooper's novel explores inheritance and uses the trope of the covertly swapped child, so that the "rightful" heir to a plantation ends up a slave, and a slave's child becomes master. Finally, Martin's novel takes the white woman slaveholder's perspective, offering a partial and privileged account of the institution of slavery that challenges facile connections between white women and slaves. The inclusion of a text by a European American in this chapter is deliberate, in order to counter any essentialist or separatist notion in relation to literature's authorizing voices.

Following from discussions of race and motherhood, chapter 3 explores the construction of the "good mother" and the "bad mother" in both literature and society, and how such roles bring women into conflict with the law. "Real life" examples include the media circuses that surrounded the trials of Andrea Pia Yates, the mentally ill Texan mother who drowned her five children in the family bath in 2001, and Susan Smith, the South Carolina mother who drove her car into a lake with her children still inside in 1994. Filicide—the killing of a child by its parent—is more common than the general public likes to admit; when that parent is a mother, the crime appears to be a betrayal of all that a mother is supposed to stand for: comfort, care, love, protection. Indeed, this chapter engages with the supposed innate maternal instinct and explores how such myths falsely divide those who are "deserving" and those who are not. In *A Map of the World* (1996), by Jane Hamilton, for example, a farm woman who negligently causes a child's death is later accused of sustained abuse of another child in her care: here, an accidental death is misread as a clue to the woman's monstrous nature. In *The Good Mother* (1986), by Sue Miller, a mother's position *as* mother is undermined by the fact that

she conducts a sexual relationship with a man who is not the father of her daughter. This alone is enough to brand her a bad mother; thus, when the ultimate taboo—child sexual abuse—is alleged, it is clear to see that this mother will have to relinquish her role, despite no wrongdoing on her part. Finally, in *Midwives* (1997), by Chris Bohjalian, the death of a pregnant woman under the care of an unlicensed midwife leads to a manslaughter charge and a legal review of how childbirth is experienced and controlled. In *Midwives* as in the other texts, guilt and crime take on a variety of meanings. In all three texts, trials are central to the narratives but, more importantly, each in some way interrogates how motherhood itself is regulated.

Almost every text compares, in at least a small way, a courtroom to the theater, with participants acting their roles, well or not so well, the scripts prepared and either stuck to or ad-libbed. Chapter 4 thus moves away from novels and into the theater. This chapter explores the way in which twentieth-century drama evokes “unruly” or outlaw women and overtly stages their guilt or innocence within the space of a courtroom setting. Here, the idea of women on display becomes most apparent, and the way in which women’s voices become co-opted is overtly challenged. Indeed, as Judith Resnik argues, “Women literally lacked juridical voice. Until quite recently, women were the objects of the discussion, as property, as victims, as defendants, but not the authors, the speakers, the witnesses, the lawyers, the judges, or the jurors.”⁹⁰ This partial or occluded voice has preoccupied feminist critics and playwrights for most of the last century, and representative plays that engage with this idea include Sophie Treadwell’s *Machinal* (1928), Susan Glaspell’s *Trifles* (1916), Sharon Pollock’s *Blood Relations* (1981), and Sarah Daniels’s *Masterpieces* (1984). Each of these texts is based on or references real-life murder trials.

In this chapter I explore what Jennifer Wood describes as “usurpatory ventriloquism”—the authority to speak and act for others—that is inscribed in the asymmetrical power relations of the court and played out on the stage.⁹¹ Treadwell’s *Machinal* is loosely based on the historical Ruth Snyder, and the “Young Woman” on trial finds that legal language does her a disservice; she is unable to let her lawyer’s words speak for themselves. Similarly, Glaspell’s and Pollock’s plays engage

with issues of voice and ventriloquism, the staging of femininity, and the central vexing question of why some women choose to murder. Pollock's play reinvents Lizzie Borden and playfully offers the audience an actress playing an actress playing Borden herself. Finally, Daniels's *Masterpieces* explores how crimes against women are misnamed, as West has indicated; issues to do with rape, pornography, sexual harassment, and prostitution are all explored from a gendered point of view, and the central character refuses, as Treadwell's Young Woman does, to allow the court to represent her falsely. Chapter 4 thus explores the ways in which guilt and innocence are "staged," as well as how drama itself works as a complicating arena for the exploration of women and the law.

Chapter 5 examines the complex relationship between women and the law in television series and television movies, as well as blockbuster films. As Adelberg and Currie contend, "Media images of courtrooms, prisons, and criminal acts serve as the source of public knowledge about offenders. Particularly in the case of women, these images are hugely distorted from reality."⁹² This chapter includes a discussion of the 1930 Motion Picture Production Code, which governed the moral messages of films and forced filmmakers to ensure a "proper" reading of the law. Such a code obviously affected how films regarding crime were made. I explore in this final chapter both the real-life tragic lawbreaker as reinvented on screen (Aileen Wuornos in *Monster*, Barbara Graham in *I Want to Live!*) as well as the comic lawmaker (Amanda Bonner in *Adam's Rib*, Elle Woods in *Legally Blonde*). I conclude this chapter with an analysis of the television series *Ally McBeal*, a critically contested, postmodern, postfeminist series that has provoked a great deal of debate about the appearance of women before the court.

The title of my book, *Courting Failure*, is more than just a play on words; it is an assertion of the tension that necessarily exists between the supposedly gender-blind law and the gender-influenced society that creates the law. In my conclusion, optimistically entitled "Courting Success," I revisit many of the questions raised in the preceding chapters. Criminology has long treated the female offender as "other," and feminist analyses are a necessary counterpoint for this one-

sided portrait. Interdisciplinary studies such as law and literature also make a much-needed contribution to this debate. This monograph is an attempt to explore just a few of the implications of the space accorded the female offender, whether fictional or real, and to begin to discuss some aspects of confinement and release that characterize her position. Looking forward, the conclusion surveys the critical debates and asks what the future holds for women and the law. As writers engage with the space of legislated patriarchy and subvert further the grounds upon which women are judged, they open up spaces in the courtrooms that will not be filled with women's silence but with (as Heilbrun and Resnik hopefully prophesized and I noted at the beginning of this introduction) women's "right to anger, their use of power . . . [and] their noncomplicity in the role of sex object."⁹³ A key text here is the long-listed Booker Prize novel *Critical Injuries* (2001), by Joan Barfoot, which explores the hotly debated issues of restorative justice and grace. Such texts open out, rather than close down, the arena in which women tackle the law, and it is thus fitting that *Courting Failure* should end with a discussion of this challenging and important text.

In 1989, when Heilbrun and Resnik first published their article "Convergences," the law and literature movement was, Resnik argues, "indifferent to the rich infusion of feminist theory in literature departments and to the claims that feminist jurisprudence was making in law."⁹⁴ A year later, *Harvard Women's Law Journal* devoted a significant portion of volume 13 to law and literature. Throughout the 1990s, important edited collections on women and the law were published, including *Representing Women: Law, Literature and Feminism*, edited by Susan Sage Heinzelman and Zipporah Batshaw Wiseman, and *Beyond Portia: Women, Law, and Literature in the United States*, edited by Jacqueline St. Joan and Annette Bennington, as well as monographs such as Robin West's *Narrative, Authority, and Law*.

In the early part of the twenty-first century, many more texts are successfully engaging with the variety of experiences that women—both fictional and real—participate in or react to. It is in the spirit of contributing to this debate that *Courting Failure* proceeds. From invented nineteenth-century texts to the big screen, from plays to tel-

evision drama, the figure of the woman in conflict with the law offers us an opportunity to explore how a postegalitarian stance can reframe the questions—and the answers—that face those of us who have an interest in society and the law.

Chapter One

Prison, Passion, and the Female Gaze

Twentieth-century women writers engage in metaphorical rewritings of the panopticon, inserting explicit and implicit references to it within many of their novels on women and the law. Designed by Jeremy Bentham as an “inspection-house” and made famous by Michel Foucault’s incisive reading of it, the panopticon is a place to set aside and observe the criminal, the damaged, or the subject who needs to be contained. Its central watchtower overlooking a circular arrangement of back-lit chambers, or cells, ensures that the prisoner believes herself to be threatened with observation at all times. The apparently constant gaze here becomes linked to punishment, with the observed prisoner always at risk of being caught breaking the rules. The result is an internalization of the law, of propriety, and a “new mode of obtaining power of mind over mind, in a quantity hitherto without example.”¹ Foucault analyzes how the gaze becomes internalized, and feminist critics such as Sandra Lee Bartky have added a corrective to his work by exploring the implications of gender in relation to the power structures of the panopticon.

Such is the power of this image that women writers of the twentieth century utilize its imposing structure in their own explorations of women, power, and the law. Thus, we have Angela Carter exploring the labyrinths of power and the gaze in her fantastic novel, *Nights at the Circus* (1984), Margaret Atwood examining the role of the gazed upon within and outside prison walls in *Alias Grace* (1996), and, perhaps most overtly, Sarah Waters investigating the “queer” effects of

the panopticon on inmates and visitors alike in her novel *Affinity* (1999). These writers subvert the hierarchical notion of the prisoner as powerless, the authorities as powerful; the women inmates in the texts above turn from gaze to touch, find the power in being gazed upon, or harness the illusion of control for their own purposes. Moreover, in explicitly or implicitly seeking “improper” relationships, these fictional prisoners step outside their prisons and wrest control from those who seek to contain them.

While the purpose of the panopticon, as Foucault reminds us, is “to see constantly and recognize immediately,”² in these fictional texts of the nineteenth-century gaze, sight and recognition are far from equivalent. Indeed, it is in their very mapping of misrecognitions that they exert their force. Carter’s female murderers reject the part offered to them of penitent sinner and refuse to express repentance, even though they know such a stance will keep them in thrall to a governess’s pitiless gaze. Alternatively, Atwood’s fictionalized Grace Marks willingly (and willfully?) plays the part of mad-woman, murderer, and wrongfully accused. Finally, Selina Dawes, the “wrongfully” imprisoned spiritualist in Waters’s *Affinity*, uses shadows and illusion—the central mechanisms of the panopticon—in order to control Margaret, her link to the outside world. In each of these texts, the female gaze constructs the love object; in *Alias Grace*, it even incorporates it, as Grace Marks “becomes” Mary Whitney, her friend and spectral conspirator.

The gaze has long been a subject of feminist analysis, with Laura Mulvey’s article “Visual Pleasure and Narrative Cinema” kick-starting the exploration of how the male gaze is normalized in film.³ Scopophilia, or pleasure in looking, is clearly gendered. As Bartky acknowledges, “Under male scrutiny, women will avert their eyes or cast them downward; the female gaze is trained to abandon its claim to the sovereign status of seer.”⁴ Bartky further argues that “a panoptical male connoisseur resides within the consciousness of most women: they stand perpetually before his gaze and under his judgment. Woman lives her body as seen by another, by an anonymous patriarchal Other.”⁵ It is this patriarchal Other who is the implicit subject of each of the novels that I analyze here, as the women who

are being watched take control themselves, subverting the underlying principles of the panopticon for their own ends. In what follows, I will explore *Nights at the Circus*, *Alias Grace*, and *Affinity* as texts which utilize and subvert the power of the panopticon, inserting instead a feminine gaze that allows for illusion, performance, and subversive control.

Nights at the Circus: A Women's Panopticon?

Joanne Gass argues that Angela Carter's *Nights at the Circus* explores "the ways in which the dominant, frequently male-centered discourses of power marginalize those whom society defines as freaks (. . . in particular, women) so that they may be contained and controlled because they are all possible sources of the chaotic disruption of established power."⁶ In all aspects, then, and in all arenas where Carter's women perform (the circus of the title, the brothel, the freak show, and, in particular, the prison), power is central to the narrative. As is typical for Carter, though, such power is asserted only to be subverted. This is particularly apparent in her structuring of the prison as a panopticon. In contrast to *Alias Grace* and *Affinity*, the prison in *Nights at the Circus* serves as little more than an aside in the fantastic tale of Fevers, Carter's central, peripatetic winged woman. Indeed, the idea of a prison as an "aside"—a place to set aside and forget—makes the panoptical images particularly intriguing. Carter spends a mere two chapters exploring the panopticon before she allows her female prisoners the freedom to vanish from the prison and the text. What she does in this space, however, remains central to a feminist reading of punishment and release.

The Countess P., aware of her own guilt in relation to the poisoning of her husband, sets up a "private asylum for female criminals."⁷ The narrator cautions, "Do not run away with the idea it was a sense of sisterhood that moved her." Indeed, in each of these texts, the concept of sisterhood is undermined, even as female relationships become central to the narratives, through design or desire. The Countess P. believes herself to be "a kind of conduit for the means of the repentance of the other murderesses" (210). Unpunished herself,

she remains thus unforgiven, and can only approximate her own penitence through building a penitentiary for others:

It was a *panopticon* she forced them to build, a hollow circle of cells shaped like a doughnut, the inward-facing wall of which was composed of grids of steel and, in the middle of the roofed, central courtyard, there was a round room surrounded by windows. In that room she'd sit all day and stare and stare and stare at her murderesses and they, in turn, sat all day and stared at her. (210)

Carter's explicit awareness of Foucault's reading of the panopticon becomes clear in the way that she appropriates his language to describe it. Carter notes, "During the hours of darkness, the cells were lit up like so many small theatres in which each actor sat by herself in the trap of her visibility" (211), words more than reminiscent of Foucault's description: "They are like so many cages, so many small theatres, in which each actor is alone. . . . Visibility is a trap."⁸

Carter's foray into the world of the panopticon starts with a factual, dry tone, indicating the power of the prison, while occasionally letting in a ray of humor. In one example, the narrator suggests that "[t]here are many reasons, most of them good ones, why a woman should want to murder her husband" (210). The dry third-person narrative is disrupted by these insertions, as well as a later, second-person insertion: "you were never alone, here, where her gaze was continually upon you, and yet you were always alone" (213). This change to second-person voice implicates the reader, forcing us to join with the inmates in our visible solitude. At the same time, it provokes the question: are the inmates still imprisoned when we aren't looking? The convention of referring to textual events in the present tense suggests that they are; the inmates are always stared at and staring back, always in the moment of being watched. That the past tense does not apply to discussions of textual events suggests no end to their imprisonment, as they are imprisoned afresh each time a new reader gazes upon the page. Thus, we become both prisoners (addressed as and included in "you") and prison wardens of a different kind in reading about these events.

Carter's postmodern and playful disruption of a stable position—you, I, they—is also in evidence in the way that she takes Foucault's

reading one step further, acknowledging the manner in which the gazer becomes imprisoned within this dynamic as well. The narrator is aware of the countess's own entrapment: "the price she paid for her hypothetical proxy repentance was her own incarceration, trapped as securely in her watchtower by the exercise of her power as its objects were in their cells" (214). Moreover, the countess remains blind to this fact (despite her constant gaze), while the prisoners themselves acquire power through this knowledge. Furthermore, they realize, if she does not, that they will never be freed from this prison, despite her claim that she will release the truly penitent. Victims of male abuse, these women seek not humility but justice, and find it through a disruption of the patterns of behavior governing wardens and inmates.

Thus Olga Alexandrovna leads an "army of lovers" when she finally dares first to touch and then to gaze upon her female warden, breaking the power of isolation and containment. Here, the prisoner breaks with what Bartky calls "the economy of touching."⁹ Bartky argues that who touches whom, how often, and where, is influenced by hierarchical organizations of power. Thus, the powerless (in Bartky's example, women) suffer inappropriate touch (a grope, a slap) in ways that men do not, because men are licensed to touch women; they hold more power. In Carter's novel, this power is reversed; it is the prisoner who touches first and who breaks the boundary between prisoner and warden. Once touch is established—as loving, and as desirable—then gaze follows, at first surreptitiously, and then more boldly.

Emboldened by mutual desire, the women in the prison begin longing, loving relationships and overthrow the central power of the countess to effect their own release and freedom. Appropriately, "[t]hey left the countess secured in her observatory with nothing to observe any longer but the spectre of her own crime, which came in at once through the open gate to haunt her as she continued to turn round and round in her chair" (218). If sisterhood, in its idealized representation, suggests a loving relationship and a lack of violence and aggression, it does not preclude, it seems, the meting out of justice.

Carter's exploration of the panopticon reveals the way in which the authoritative gaze inscribed by the panopticon is subverted, once the gazed-upon understand the mutually imprisoning aspect of this

look. Moreover, her novel explores how these imprisoned and “docile” bodies (as Foucault has it) assert themselves as uncontainable, their pleasures released from normative control.

*Kingston Penitentiary, Alias Grace,
and the Object of a Panoptical Gaze*

In Atwood’s *Alias Grace*, imprisonment lasts much longer and takes more than one form. The historical Grace Marks was imprisoned for over twenty-eight years for her part in the murder of her employer, Thomas Kinnear. Kinnear’s housekeeper-mistress, Nancy Montgomery, was also murdered, but neither Marks nor her co-accused, James McDermott, was ever convicted of this offense: in the historical record, it is the murder of a wealthy landowner—a man—that truly counts. Marks was primarily confined in Kingston Penitentiary, Ontario, and finally pardoned in 1872, after which she disappeared from public record.

Kingston Penitentiary, perhaps because of its unique history as the first federal prison in the Canadian criminal justice system, has seen its share of literary representations. In the same year that *Alias Grace* was published, Marilyn Simonds’s *The Convict Lover: A True Story* (1996) also appeared.¹⁰ Photographs of the prison and its prisoners provide proof of the story’s truth. Simonds’s nonfictional text explores the female as lovesick dupe, not criminal (a position or role also potentially undertaken by Grace Marks). In 1919, in the village of Portsmouth, a young woman, Phyllis Halliday, became the willing correspondent with and go-between for a convict, who signed himself “DaDy Long Legs” in missives asking for tobacco and promising affection. Simonds reconstructs the probable narrative behind the correspondence, of which only the prisoner’s half remains. Like Atwood, Simonds constructs the story from fragments that are lodged in Queen’s University Archives in Kingston, Ontario; she also acknowledges the many memoirs and other texts written about Kingston Penitentiary, including Roger Caron’s well-known *Go Boy* (1978).

Simonds traces two years of correspondence, during which time Phyllis risked her reputation and possible legal action for supplying

contraband. The man, simply known as “the prisoner” to begin with, is offered a number, G852, before he is identified as Joseph Cleroux, though even this name is but one of several aliases. Simonds relied on historical documents in addition to the correspondence she uncovered in the attic of her own Kingston house, factors that are clear in the descriptions of the prison itself and the people who populate it. *The Convict Lover* explores what it means to be labeled a prisoner and how that label follows the prisoner wherever he goes. As Simonds notes, “According to the [Penitentiary] Act, wherever a convict set foot was penitentiary land, and so the boundaries of Portsmouth village flexed as the prison work gangs passed.”¹¹ That there is no escape from this label accords with contemporary investigations of the panopticon, a prison structure meant to enact the threat of constant surveillance while inhibiting the prisoner’s ability to see.¹² Kingston Penitentiary was at least partly based on the ideal panopticon first described by Jeremy Bentham in his letters of 1787.

Kingston Penitentiary is thus symbolically important as a site of incarceration for Ontario and beyond. As the location of historical confinement and literary release, Kingston Penitentiary was built to be one of the largest public buildings in Upper Canada. It was erected for five main reasons: “the death penalty was not being executed for crimes less than murder, fines were unjust, local gaols were bad because they lumped young offenders with seasoned criminals, corporal punishment was improper and degrading, and banishment was unenforceable and often no punishment at all.”¹³ The presence of a British garrison as well as large quantities of stone ensured that Kingston was an ideal site for this new prison. This admixture of moral and material reasons ironically highlights the mixed messages implied by the Canadian prison reform that Kingston Penitentiary represents.

In the article “The Kingston, Ontario Penitentiary and Moral Architecture,” C. J. Taylor outlines the factors that contributed to the development of the Kingston Penitentiary. As Taylor notes, its walls “would allow the keeper to observe the prisoners through apertures even when they were in their cells but would prevent the prisoners from knowing whether or not they were being watched, giving the impression of continuous surveillance.”¹⁴ In Bentham’s proposed

panopticon, the purpose of this disjuncture between seeing and being seen is clear. It is through being constantly visible that the inmate is controlled:

the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose X of the establishment have been attained. Ideal perfection, if that were the object, would require that each person should actually be in that predicament, during every instant of time. This being impossible, the next thing to be wished for is, that, at every instant, seeing reason to believe as much, and not being able to satisfy himself to the contrary, he should *conceive* himself to be so.¹⁵

Moreover, “[lateral] invisibility is a guarantee of order.”¹⁶ In other words, the inability to see one’s fellow inmates prevented conspiracies, prison outbreaks, and organized unrest (though it did not, clearly, prevent the *fear* of these events by authorities, as evidenced by the liberation book questions put to inmates prior to their release).

Foucault argues that the panoptical mechanism is fundamentally about power:

Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action: that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers.¹⁷

This is “moral” architecture at its height, a model prison that ensures solitary confinement, social control, and moral reform. Taylor’s reading of the purpose of this type of architecture is clear and related to Foucault’s reading: “It was the architecture that should constrain and organize the inmate rather than the guard. In this way the penitentiary system would seem to embody an abstract moral principle which the inmate was supposed to adhere to when he was released.”¹⁸ Thus, the penitentiary’s role became linked to “a projection of the world as it should be. The penitentiary represented a community, although an artificial one, where the old values of obedience by the lower orders to a higher power were implicit.”¹⁹ The relevance

of this for Atwood's text is clear: Grace Marks is a servant who, whatever her active or passive role in the murder of her employer, overstepped the mark of her social class.

If North American prison reformers—including the Boston Prison Discipline Society, which was influential in the building of Kingston Penitentiary—were responding to real concerns about prisoner behavior, they were also, according to Taylor, responding to manufactured concerns about the rise in immigration and urbanization as threats to civilized society.²⁰ In this context, it is no coincidence that Grace Marks was also an immigrant, almost automatically, then, deserving of punishment. Contemporary hysteria about immigration levels clearly has a historical precedent.

Moral architecture, as Foucault reports, “arrests or regulates movements; it clears up confusion; it dissipates compact groupings of individuals wandering about the country in unpredictable ways; it establishes calculated distributions.”²¹ *It keeps people in their place.* Such a recognition is important both for considering the Penitentiary Act that stated that the penitentiary is wherever the prisoner is, as well as for the way in which the immigrant—and social inferior—Grace Marks is treated.

Atwood's Grace Marks is sent to the insane asylum, the prison, and, on separate but connected occasions, private homes in order to “play out” her penitence. The historical Marks was a “celebrated murderess” who was often paraded in front of tourists (Susanna Moodie famously being one of them), but the story of her role in the murders of Thomas Kinnear and Nancy Montgomery remains unclear. An immigrant and a servant, she had no real access to power—except, perhaps, sexual power—and much media speculation existed about her relationships both with Kinnear and with James McDermott, the man who was hanged for Kinnear's murder. Grace Marks was young and, in some reports, attractive. Her gender and youth spared her from the noose but not from public vilification. Indeed, the fact that she was wearing the murdered woman's clothes when she was caught became a sign, at least for some, of her clear guilt. Like Lena Schwartz in Callaghan's short story, she was considered *visibly guilty* as a result of her attire.²²

Atwood uses these details in her fictional recounting of Grace's life. In Atwood's version, Grace is allowed limited freedom on occasions and becomes a domestic helper to the prison governor's wife, acting as both servant and spectacle for the women who gather in this private yet public home to gain illicit thrills from their proximity to female violence. Confined by their respectability, the governor's wife, her companions, and her daughters live vicarious violence through a crime scrapbook that mimics contemporary interest in true crime narratives. Anita Biressi argues that an "emphasis upon secret and occluded knowledge stems from an extreme transgression of acceptable limits, a crossing of boundaries that seems to command a search 'into the mind of the murderer.'" ²³ Exactly what the gathered women search for is not always clear, although their movement beyond acceptable limits is:

The Governor's wife cuts these crimes out of the newspapers and pastes them in; she will even write away for old newspapers with crimes that were done before her time. It is her collection, she is a lady and they are all collecting things these days, and so she must collect something, and she does this instead of pulling up ferns or pressing flowers, and in any case she likes to horrify her acquaintances.²⁴

Grace also notes that what the women are most interested in are hints of sexuality: "They don't care if I killed anyone, I could have cut dozens of throats, it's only what they admire in a soldier, they'd scarcely blink. No: was I really a paramour, is their chief concern, and they don't even know themselves whether they want the answer to be no or yes" (27). Atwood acknowledges here the regulating power of gender roles, just as she had located gender as a chief component in Grace Marks's trial. Significantly, Grace fails to answer this question.

In Atwood's version, the prison governor's wife defines herself as a virtual prisoner of the penitentiary because her house is enclosed within prison walls (24). The historical prison warden, John Creighton, also defined his role as one of incarceration and necessary release. If Carter's warden is unwittingly enclosed within her prison, the historical warden Atwood relies on for her novel is ironically unaware of the inappropriateness of his longing for release.

The Warden's Daily Journals of 1870–74 cover the period of Grace Marks's release and reference her specifically in 1872. The entries are short, concerned primarily with the day-to-day running of the prison, and the entering and exiting of the prison by the warden himself. A representative entry, from Friday, January 5, 1872, runs thus: "Entered Prison at half past 6 this morning and performed all the duties of the day. I was absent from 3 to 5 for a little exercise, as I find it injurious to my health to keep so close to work as I have been lately. Left at 6 P.M." Two weeks later, the warden notes that he left the prison at 10 A.M. and "made a visit into the country, as I have been closely confined and unwell for several days past."²⁵ Creighton appears to find no irony in the fact that he is free to leave the prison at will, while his wards are not able to have the same liberty. His "confinement" is temporary and to an extent chosen, and his health is clearly of a higher standard than those who are not allowed the luxury of release.

However, Creighton appears to have been a prison reformer, a man who was insulted when, in a letter to the editor of the *Irish Canadian* on June 20, 1872, he was accused of behaving improperly and with vengeance. The warden's entry for June 28 gives a long and heartfelt account of his actions and moral conscience. He appears truly upset that his character has been maligned and suggests that an unhappy warden has made the story up: "I feel in my conscience that none of the men are punished cruelly or severely, and that it requires more moral courage sometimes to refrain from punishing a bad man than to inflict it." Such sentiments indicate a progressive prison regime, in hope if not in actuality.

Two entries from 1872 relate to Grace Marks herself. On Friday, August 2, 1872, Creighton notes, "Same as yesterday except that I visited the city from 12 to 2 to see Minister of Justice about Grace Marks whose pardon I received this morning. It was Sir John's [Macdonald's] request that I and one of my daughters should accompany this woman to a house provided for her in New York." Five days later, the entry reads:

Entered prison at 6 A.M. Was present in Dining Hall at Breakfast. Addressed a few words to Convicts informing them that I was called away for a few days

on Prison Business and that I hoped they would behave well in my absence. Examined and discharged Grace Marks, Pardoned after being imprisoned in this Penitentiary, 28 years and ten months. Started with her and my daughter for New York at 1:30 P.M. by order of the Minister of Justice, leaving Prison in charge of Deputy Warden.

The day before her release, like all convicts on their discharge from the penitentiary, Grace Marks was asked a series of “Liberation” questions, which were recorded in the Liberation Question Book.²⁶ Such questions concerned the conditions at the prison, the length of incarceration of the inmate, and the authorities’ fears of a conspiracy; thus, they move from enquiring about the prisoner’s experiences to any knowledge she might have about what others were plotting against the prison administration. Grace’s answers are almost always single words—yes or no—and reveal no further information than is strictly required. In this way, the historical Grace Marks is much like Atwood’s construction of her: a withholding witness who refuses at some level to tell her own story. Indeed, there are enough versions around without her own contribution to create a multiple reading of her guilt or innocence.

Atwood utilizes a gothic framework in order to obscure rather than illuminate her heroine’s ultimate innocence or guilt. The gothic framework becomes even more explicit in Waters’s *Affinity*, but in *Alias Grace*, it serves to introduce multiple and fantastic readings of pretrial events. Norman Holland and Leona Sherman identify the gothic framework as one which includes the image of “woman-plus-habitation and the plot of mysterious sexual and supernatural threats in an atmosphere of . . . mysteries.”²⁷ Indeed, Atwood’s utilization of ghosts, entrapping homes, and caddish men, with the female body as prison, works within most of the definitions of the gothic that critics offer. As Susanne Becker argues, the female gothic

plays an important role throughout the almost two centuries of modern female culture: there has been a vigorous exchange of allusions and revisions, and even of provocations and answers, a dynamic—and self-conscious—writing and rewriting of feminine texts haunting one another: around the interrogative texture of romantic love and female desire, of gender construction between *le propre* and the monstrous-feminine, of the (contextualising) dynamics of domestic horror.²⁸

Romantic love, female desire, and domestic horror become entwined in illicit ways in the text—as servant and master transgress class boundaries (in relation to Kinnear and Montgomery, as well as to Grace’s friend Mary Whitney and her master-lover), and as Grace herself “becomes” the object of her own (unacknowledged) love interest, Mary herself. Grace is presumed innocent or guilty by various observers, but never herself explains fully her own reading of the events. Peter Hutchings argues that “[l]ike the vampires with whom they came to be associated, women are not reflected in murder’s mirror.”²⁹ Hutchings’s metaphors work well in relation to Atwood’s *Alias Grace*. The novel provides us with several images of Grace in a mirror, the most important of which has Grace looking in a mirror and contemplating her own multiple descriptions:

I think of all the things that have been written about me—that I am an inhuman female demon, that I am an innocent victim of a blackguard forced against my will and in danger of my own life, that I was too ignorant to know how to act and that to hang me would be judicial murder, that I am fond of animals, that I am very handsome with a brilliant complexion, that I have blue eyes, that I have green eyes, that I have auburn and also brown hair, that I am tall and also not above the average height, that I am well and decently dressed, that I robbed a dead woman to appear so, that I am brisk and smart about my work, that I am of a sullen disposition with a quarrelsome temper, that I have the appearance of a person rather above my humble station, that I am a good girl with a pliable nature and no harm is told of me, that I am cunning and devious, that I am soft in the head and little better than an idiot. And I wonder, how can I be all of these different things at once? (23)

This long list, quoted in full to represent the many versions of events and varying personal attributes that Atwood incorporates here, also provides a postmodern contemplation of the fluidity of identity as process, not product. Moreover, it may also covertly say something about how a lawyer constructs a case: using what is *useful* (not necessarily what is relevant or even in some cases truthful) and discarding anything that does not fit the “story.” Grace claims, after all, that it was her lawyer’s decision for her to appear stupid; it “fit” his case. Grace, reflected in many mirrors here, somehow continues to elude description; the many versions proffered of her give the reader less to go on, not more.

Hutchings argues that the working-class female criminal was considered “feeble-minded,” the middle-class woman “mad”;³⁰ despite her clearly determinable class status, however, Grace takes up both positions. She is feeble-minded at her trial, a factor that may have spared her life when her accomplice—or dupe, or abusive captor—was hanged; she is mad at points in the narrative, too, shipped to the nearby asylum for periods of time. It is the “mad” Grace Marks that Susanna Moodie writes about in *Life in the Clearings* (a source that Atwood was later to discredit as sensationalist and inaccurate).

Instead of providing us with “her” story, the fictional Grace records her refusal to be subject to the usual “female story,” a story that has entrapped all the women that she came to know. In this “female story,” the results of romantic love are disgrace, betrayal, and abandonment; this message is reinforced not only in her own family circumstances, but by her fellow servant and friend, Mary Whitney, whose liaison with the master’s son leads to betrayal, botched abortion, and subsequent death. They are all, as Grace notes, “the same story” (165).

Story itself comes to define the novel, as Grace’s position alters depending on who is gazing upon her. For example, Dr. Simon Jordan, the man who is given the task of psychoanalyzing her for the purpose of recovering her memory, notes of her fate: “But what does an example do, afterwards? thought Simon. Her story is over. The main story, that is; the thing that has defined her. How is she supposed to fill in the rest of the time?” (91). Moreover, the narrator comments after one of their sessions together, “They’ve been talking together all afternoon as if in a parlour; and now he is free as air and may do whatever he likes, while she must be bolted and barred. Caged in a dreary prison. Deliberately dreary, for if a prison were not dreary, where would be the punishment?” (186).

The punishment enacted upon the women in *Nights at the Circus*—to be permanently visible—is circumvented in many respects by Grace. She records that the height of windows in her prison prevents any sight—either in or out: “They do not want you looking out, they do not want you thinking the word *out*, they do not want you looking at the horizon and thinking you might one day drop below it

yourself, like the sail of a ship departing or a horse and rider vanishing down a far hillside” (237; italics in original). It is when Grace is *outside* the prison walls, working for the governor’s wife and thus subject to the female gaze, that she undermines the notion of being watched:

There is a good deal that can be seen slantwise, especially by the ladies, who do not wish to be caught staring. They can also see through veils, and window curtains, and over the tops of fans; and it is a good thing they can see in this way, or they would never see much of anything. But those of us who do not have to be bothered with all the veils and fans manage to see a good deal more. (229)

Here, Grace wrests control from her superiors by gazing herself, and by controlling the way in which she is gazed upon. Grace thus incorporates a jumble of contradictory roles: she is the “perfect” lady, serving food for the prison governor’s wife, sewing intricate patterns, maintaining chastity, and generally conforming to expected feminine behavior; she is also a violent prisoner who may or may not have invited sexual congress with a variety of men. The “truth” depends on whichever story is being told. As Judith Knelman notes, Atwood “constructs Grace through a chain of texts—contextualizes their meaning—so that they represent more than the historical events that they were constructed to mark.”³¹ These representations are decidedly plural, as Atwood keeps a variety of possible storylines afloat: Grace is possessed; Grace is mad; Grace is psychically disturbed; Grace is cunning; Grace is guilty. Each reading is given support in the novel; no reading is fully discounted as false. Each reading acts as a legal text, either conforming to or contradicting a lawyer’s construction of innocence or guilt. Perhaps underneath this knowledge is the familiar claim that law equates with storytelling. Jane B. Baron suggests that

the claim “law is just a story” is perfectly ambiguous. . . . It could mean that law fails to take account of important experiences and facts and has therefore gotten things wrong. Or the claim that law is just a story could mean that in law, as elsewhere in life, there is no unmediated way to know the truth, i.e., to get things right, so that law can never do more than reflect some particular points of view and, necessarily, suppress others.³²

Here, the idea of the law as a story works both ways; indeed, Cristie March calls *Alias Grace* “an authorial mosaic” because it contains so many voices and elements.³³ It does not, however, contain a definable truth.

Verbal communications are both excessive in the text—Grace’s interlocutor silently accuses her of fabricating her many memories—and secreted.³⁴ Meaning is not readily supplied, but frequently needs to be inferred, as with the hints of lesbian desire that the text both uncovers and covers over. Grace loves her servant friend Mary so much that she appears to *become* her in a spooky, séance-invoked explanation of the murders, and she perhaps covets more than Nancy Montgomery’s clothes, though supposed jealousy motives are (at least overtly) framed within assumed heterosexuality. The lesbian as ghostly spectacle (the unspeakable) and the female criminal as aberrant are clearly being connected here, and both “need” regulation. Indeed, as Peter Hutchings argues, “the nineteenth century subject is *haunted* by crime, by its signs and stories and the shapes of institutions designed for its regulation.”³⁵ Thus it is very much in keeping with the notion of the aberrant female and the panopticon prison that Grace Marks may fabricate a story of ghostly possession; it is also in keeping with this story that she *appears* to offer an explanation that allows her to keep her innocence while permitting behavior and speech that are in themselves “unacceptable.” If she is not responsible for the crimes committed during the time that the spirit of Mary takes possession of her body, then she cannot be held responsible for the vulgar voice that describes such actions. Given the novel’s focus on psychoanalysis, it is also possible that this story is one of multiple personalities, or associative personality disorder, a diagnosis still under much debate in medical communities today. Either explanatory framework leaves Grace “innocent,” a victim of spiritual or mental displacement, even if her actions may label her “guilty.”

Simon Jordan’s reaction to the séance that invokes a contested confession is one of confusion, not least because the event is meant to be a scientific exploration of hypnosis, not the spectacle it becomes: “He was expecting a series of monosyllables, mere yes’s and no’s dragged out of her, out of lethargy and stupor; a series of com-

pleted and somnolent responses to his own firm demands. . . . This voice cannot be Grace's; yet in that case, whose voice is it?" (400). In the trial, Grace's voice is co-opted by her lawyer to tell a story of imbecility; under hypnosis, her voice conforms neither to the historical monosyllabic Marks nor to the story of her innocence: this "other" voice may represent a slanted truth that no one present seems able to credit. Indeed, when asked to record his findings, Simon Jordan realizes that "[t]he safest thing would be to write nothing at all. . . . [T]he fact is that he can't state anything with certainty and still tell the truth, because the truth eludes him. Or rather it's Grace herself who eludes him. She glides ahead of him, just out of his grasp, turning her head to see if he's still following" (407).

This final rendering of Grace is not accidental in its ghostly metaphor. Hutchings argues that "[t]he criminal is, thus, not some shadowy counterpart of the law-abiding citizen but *as spectre* the very form of law and the shape it seeks to control, a spectre jointly produced through the discourses of law, literature, psychiatry, aesthetics and criminology."³⁶ As specter, Grace is the object of discourse as well as the object of the gaze: Dr. Jordan wants to capture the truth of her, to get her to speak; the governor's wife wants her to be a containable spectacle; and others want to know once and for all whether she is innocent or guilty, states of being that the courts suggest are mutually incompatible. However, Grace Marks has successfully eluded all such containers. She may be visible in her panopticon, and she may carry the penitentiary wherever she walks outside its walls, according to the Penitentiary Act, but in her refusal to speak except as Other than herself, *and* in her refusal to be penitent (just as the prisoners of *Nights at the Circus* refused to be so), she unravels the power of panoptical structures, both real and metaphorical.

Luce Irigaray offers a reading of woman that fits with the multiple, elusive readings of Grace Marks, and the failures to contain her:

Thus the "object" is not as massive, as resistant, as one might wish to believe. And her possession by a "subject," a subject's desire to appropriate her, is yet another of his vertiginous failures. For where he projects a something to absorb, to take, to see, to possess . . . as well as a path of ground to stand upon, a mirror to catch his reflection, he is already faced by another specularization. Whose twisted character is her inability to say what she represents.³⁷

Innocence or guilt is ultimately unassignable to Grace Marks; they are lost in history and remain unclear even then, despite a guilty verdict. In the historical records, Grace provides monosyllabic answers to the Liberty Questions and departs for New York. In Atwood's version, Grace coincidentally ends up marrying a childhood friend, the boy who ironically helped convict her, and he seeks her penance in oddly sexual ways. Thus Atwood provides a nineteenth-century closure to her text—the fallen woman raised and married—but she hints at further degradation to come. Sarah Waters's *Affinity*, by contrast, chooses the “other” nineteenth-century closure for a wayward heroine: death.

Affinity: The Panopticon as Queer Geometry

Affinity (1999) is a lesbian gothic novel about a nineteenth-century prison “Lady Visitor” named Margaret Prior and her relationship with the seemingly wrongly accused spiritualist, Selina Dawes, whom she helps escape from prison. Taking its place within the framework of lesbian gothic, *Affinity* offers an unreliable yet somehow sympathetic narrator; a series of fantastical, spooky events; and a desire that cannot be readily acknowledged. The novel describes a model panopticon, Millbank Prison, which was originally designed by Jeremy Bentham and is now palimpsestically the site of Tate Britain. Its “queer geometry,”³⁸ recorded but only faultily understood by the narrator, is clear to the twenty-first century reader familiar both with Bentham's panopticon and Foucault's reading of it. Here, again, the gaze is feminized, as matron watches the women inmates, as Margaret's mother's gaze extends into the prison through Margaret's own awareness of propriety, and as Margaret first watches the prisoners and then transgresses into the space of the prisoners themselves.

In this context, “queerness” takes on a more significant meaning, and double discourses become the norm. Indeed, language is as important as vision in the novel. The repeated references to the “queerness” of Selina's crimes, and of Millbank, and of Margaret's passion for it, indicate a self-conscious reference to the lesbian desires of the text. A second deliberately repeated word is “unnatural”;

though not repeated as frequently as “queer,” its connotations also remind one of nineteenth-century medical associations of lesbianism with illness or monstrosity.

Paraphrasing Freud, Paulina Palmer argues that “the power that Gothic fantasy reveals to disturb and frighten the reader stems from its ability to articulate emotions and anxieties related to ‘the return of the repressed.’”³⁹ What is repressed, for Margaret, is any sense of lesbian desire. Indeed, near the beginning of the text she appears to be positively homophobic when she congratulates herself on having circumvented communication between two prisoners: “I followed, though uneasily—for I have heard them talk of ‘pals’ before, and have used the word myself, but it disturbed me to find that the term had *that* particular meaning and I hadn’t known it. Nor, somehow, do I care to think that I had almost played the medium, innocently, for Jarvis’ dark passion” (67). This early passage highlights the ways in which Waters cleverly blends all of the aspects of her tightly woven text: Margaret is a typical naïve heroine, willingly expressing received societal values, while simultaneously concealing—even from the reader at this point—her own desires. Moreover, the use of the word “medium” is deliberate, clearly conjuring the image of a spiritualist.

When Margaret first enters the prison, her skirts get “caught upon some jutting iron or brick” (8). This telling detail, which marks clothes as significant in the narrative of women’s (imprisoned) lives, is the first of many references to appearance, and it is linked to the female gaze: “it is in lifting my eyes from my sweeping hem that I first see the pentagons of Millbank . . . and the suddenness of that gaze, makes them seem terrible” (8). Despite this sight, Margaret Prior, a laudanum addict and bereaved spinster who is mourning the death of her scholar-father, becomes a Lady Visitor for Millbank Prison with the hope that her behavior will serve as a model for the prisoners. Like the Countess P., however, Margaret nurses crimes of her own: addiction, a suicide attempt, and a “dark passion” for another woman, her (now) sister-in-law, Helen. Given that the Gothic Romance formula focuses on issues of sexual or social transgression⁴⁰ and depends upon a sense of enclosure, where better to set a gothic text than in a model prison, with the protagonist a mere visitor?

A second narrative entwines with Margaret's while also preceding it chronologically by a year. Selina Dawes, a spiritualist, recounts her life prior to imprisonment. Her diary entries are cruder and less accomplished than Margaret's, but the reader is given no reason to disbelieve them. Indeed, so well does Waters limn Selina's character that, on a first reading, we are subject to the uncanniness of this spooky, sexy novel.

Palmer reminds us that "[h]aunting and spectral visitations, whether associated with an individual or a place, are among the most common signifiers of the uncanny in Gothic fiction."⁴¹ Waters's novel relies on uncanniness to seduce the reader, making the prison's "queer geometry" central to this mood. Foucault's underlying reading of the panopticon is also clear. Selina bitterly acknowledges that "[a]ll the world may look at me, it is part of my punishment" (47). Thus, again we have a reminder of the major effect of the panopticon, which is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."⁴² Moreover, "the perfection of power should tend to render its actual exercise unnecessary. . . . [T]he inmates should be caught up in a power situation of which they are themselves the bearers."⁴³ In *Affinity*, Margaret acts as a bearer of power in two ways: as observer of the inmates, and as her own observer, aware of her position as a lady. Margaret is thus complicit in her own subjugation and is always aware of propriety (even when, under the influence of her medication, she transgresses that space).

Indeed, despite the fact that Selina is the prisoner and Margaret a mere visitor, Margaret is the one who becomes locked within the panoptical moment. She thinks of one of the wardens, "*You are as snared by Millbank as they are*" (244; italics in original), without recognizing that these words also encode her own ensnarement. While Selina, as prisoner, appears subject to the machinery of the panopticon, she, in fact, manages to circumvent it, creating illusions of ghostly contacts that heighten the sense of gothic power.

Palmer argues that "[w]hereas Gothic narrative explores the disintegration of the self into double or multiple facets, queer theory foregrounds the multiple sexualities and roles that the subject produces and enacts."⁴⁴ Selina is a mistress of disguise, assuming the stance of

the wronged innocent in order to entice Margaret into helping to free her. So desperate is Margaret for love that she refuses to acknowledge any artifice: “[Selina] has a way about her—I have noticed it, before to-day—a way of shifting mood, of changing tone, and pose. She does it very subtly—not as an actress might, with a gesture that must be seen across a dark and crowded theatre” (86). Margaret rejects the link between Selina and an actress, as well she might, for to acknowledge Selina’s acting ability would be to acknowledge that she herself is taken in.

Moreover, historically, of course, there has been a perceived link between actresses and prostitution, and Margaret must also negate any sense that there is a sexual transaction taking place between them—even when she persuades Selina to strip for her in a scene that, upon rereading, becomes a clear exercise of power. The first reading of this scene is one of consensual pleasure: on her last visit to Millbank before the planned escape, Margaret visits Selina at bedtime, and it seems natural for Margaret to wish to watch Selina undress. Margaret exclaims, “‘How beautiful you are!’” (310) and Selina’s surprise and denial are responses any lover might make.

[Selina] let her dress fall from her, and removed the under-skirt and the prison boots and then, after another hesitation, the bonnet, until she stood, shivering slightly, in her woollen stockings and her petticoat. She held herself stiffly, and kept her face turned from me—as if it hurt to have me gaze at her, yet she would suffer the pain of it, for my sake. (309)

Selina’s shivering and reticence appear to be the results of a cold prison and a modest nature. Once the reader knows the truth of Selina’s relationship to Margaret—rather than being in love with her, she is, in fact, duping her—the passage takes on a different meaning. Selina is an actress, the prison is her theater, and Margaret as audience is duly taken in. She reads the scene as she wants to read it, not as it actually appears. She gazes upon a mere illusion, one designed to suggest that it is Margaret who is powerful, rather than the other way around. In this, Margaret again resembles the Countess P., whose desires for repentance become her own imprisonment.

Critics have noted the way in which lesbian desire has been decorporealized and made spectral,⁴⁵ as if the actual bodily connec-

tions that lesbianism connotes cannot be accommodated. In a lesbian gothic text, a ghost may act as a way of “negating physical intimacy between women.”⁴⁶ Indeed, I would argue that Waters, aware of the many and varied ways in which lesbianism has remained hidden, deliberately replicates this concealment with Margaret’s half-acknowledged desire and her references to hauntings. As the narrator suggests, “Perhaps, however, it is the same with spinsters as with ghosts; and one has to be of their ranks in order to see them at all” (58). For spinster, read, in this instance, lesbian, and one can see what tricks Waters is herself playing here.

Waters also plays with Selina’s lesbian impulses, multiply covering over the real object of desire; Selina’s “love” for Margaret is a displaced, manufactured love that hides her passion for a woman named Ruth Vigers. At the same time, Ruth Vigers is herself doubly hidden. She is Ruth to Selina, and first introduced to us as a maid; she is Vigers to Margaret, and also positioned as a maid, but there is no initial reason to connect the “two” women—Ruth and Vigers—in the text. It is only at the end that it becomes clear that Vigers acts as a conduit—or medium—of Selina’s seemingly supernatural messages to Margaret. Finally, Ruth acts as an accomplice in Selina’s séances, dressing up as the supposedly heterosexual ghostly “control,” Peter Quick. Trickery and artifice signify such occurrences; thus it is doubly appropriate that Peter Quick, who jealously guards Selina’s reputation and virtue, should himself be conjured as a lustful, heterosexual male who takes liberties with the young women at the séances. The word “control” is significant, for clearly Ruth does control Selina. Indeed, Ruth Vigers’s essential voicelessness (throughout, the reader sees her primarily as a background figure and a servant) is undercut by allowing her the last line of the novel, claiming Selina for her own: “Remember . . . whose girl you are” (352).

At the end of the novel, Margaret is betrayed, Selina and Ruth disappear like the ghosts they have been connected to, and Margaret chooses death above a return to her stifling, spinster life. The panopticon is breached: the physical prisoner has slipped away, and the gaze has shifted. As Margaret herself realizes, “But, then, that passion was always theirs. Every time I stood in Selina’s cell, feeling my flesh

yearn towards hers, there might as well have been Vigers at the gate, looking on, stealing Selina's gaze from me to her" (341–42). Margaret, denied Selina's loving gaze, is finally trapped within the gaze of propriety. Despite her class status—or perhaps because of it—she is the victim of a metaphorical panopticon, watched for failure: by her family, by the prison wardens, and by herself. In the end, then, it is not surprising that she chooses to hide away—chooses, in some ways, to inhabit a dungeon, which Foucault argues is the reverse of a panopticon, its functions “to enclose, to deprive of light and to hide.”⁴⁷ The novel ends with Margaret ensconced in her home, hiding from the law in the form of a neighborhood policeman, and planning her own death. Waters's use of the panopticon as a real structure and a metaphorical enclosure is thus cleverly upturned, with the position of the prisoner finally assigned to the one who, had she not been a lady, would herself have been at Millbank, too. Margaret Prior's initial crime is attempted suicide; by the end of the novel, she has succeeded, and learned the lesson an inmate taught her: “You think of your crimes—you don't think, “If I had not done that, I wouldn't be here,” you think, “If I had only done that *better . . .*”” (108; italics and ellipses in original).

Marie Fox notes that “narratives in both law and literature utilise punishment to effect a closure,”⁴⁸ yet these women's stories exist beyond the ending, or rather, provide a series of alternative endings that do not come together into a coherent whole: Carter's murderers disappear, Grace Marks slides from history, and Selina Dawes is spirited away. The three texts that I have analyzed in this chapter, *Nights at the Circus*, *Alias Grace*, and *Affinity*, are linked through their incorporation of the panoptic gaze, as well as the recognition of its ultimate failure to contain these female criminals. If the panopticon is more overtly referenced in the first and last texts, it is also in operation in Atwood's novel, with the recognition that Kingston Penitentiary was, like the fictional Countess P.'s prison and Millbank Prison, based on Bentham's plans. Moreover, each of these texts foregrounds the gaze as a powerful medium of control, referring back to Foucault's reading of the panopticon. What each of these texts also does, however, is ensure that the prisoners exert control *through* the

gaze, by reflecting back or reflecting on those who think that they hold the power. The panoptical power of the prisons is thus reversed, with the prison-keepers subject to incarceration or control. The Countess P., Dr. Simon Jordan, and Margaret and the Millbank Prison wardens are thus connected through the ways in which their inspection of the prisoners results in a misrecognition of their own positions.

In this way, Carter, Atwood, and Waters engage with debates about power, illusion, and subversive control. Moreover, they explore the ways in which gender itself is implicated in these texts, as the female body comes under surveillance both by men and by women. More often than not, the gaze is feminized—though not necessarily with any kind of overarching “sisterhood” being trumpeted as the end result. Indeed, only in Carter’s novel is the covert lesbian desire of the text eventually acknowledged freely. For the others, such “dark passion” takes its place as the historically hidden but more than potentially subversive element that disrupts Foucault’s sense of the panopticon. Visibility may be a trap, with Foucault’s prisoner remaining “the object of information, never the subject in communication,”⁴⁹ but Carter, Atwood, and Waters suggest that such a reading is only partial, as their prisoners communicate beyond—and outside—the walls that enclose them, registering desire, betrayal, and refusal to conform. As Bartky argues, “Foucault seems sometimes on the verge of depriving us of a vocabulary in which to conceptualize the nature and meaning of those periodic refusals of control that, just as much as the imposition of control, mark the course of human history.”⁵⁰ If Foucault is silent on these matters, feminist writers are not, and in their explorations of women and the law, they indeed write beyond the ending of women’s imprisonment, and see beyond the panoptical gaze that initially appears inescapable.

In the next chapter, the gaze turns from the prison narratives of white women caught up in nineteenth-century mores to the narratives of American slaves. Maintaining a focus on the literary pull of earlier centuries, chapter 2 focuses on the continuing fascination that the period of legal slavery in the United States has for female authors and the connections between these texts and contemporary realities.

Index

- Adam's Rib, 28, 172, 174, 190–201, 216, 217, 221
- Adams, Nehemiah, 87
- Adelberg, Ellen, 14, 28; *Too Few to Count: Canadian Women in Conflict with the Law*, 165
- Adler, Amy, 123
- African American civil rights groups, 61
- African American culture, 57
- African American genre, 246n2
- African American law professor, 56
- African American male, 78
- African American mothers, 65, 106. *See also* black mothers
- African American women, 25, 211; as property, 55–103
- African American writers, 12, 58, 74
- Allen, Hilary, 236
- Ally McBeal*, 28, 173, 174, 189, 201, 208–23, 266n62
- American Psychiatric Association, 121
- American Psychological Association, 121
- Anderson, Donna, 111
- APA Working Group on the Investigation of Memories of Childhood Abuse, 121
- Aristodemou, Maria, 12, 21, 57, 76, 77, 83, 84, 102, 152, 204, 238
- Ashe, Marie, 12, 74, 112
- Asimow, Michael, 189
- Associated Press, 109, 118
- Aston, Elaine, 166
- Atwood, Margaret, 25, 31, 32, 36–48, 53, 54, 58, 104, 227, 246n2; *Alias Grace*, 25, 31, 32, 33, 36–48, 53; *The Handmaid's Tale*, 104, 246n2
- authorial intentionality, 5, 7, 67
- Ayres, Susan, 118–19, 134
- Baker, Houston A., Jr., 59
- Baker, Karla Faye, 17
- Bakhtin, Mikhail, 86
- Barfoot, Joan: *Critical Injuries*, 29, 223, 229–36
- Barnett, Pamela E., 79
- Baron, Jane B., 4, 12, 45, 96, 102
- Bartky, Sandra Lee, 31, 32, 35, 54
- Basic Instinct*, 179
- Basilio, Miriam, 178
- battered wife syndrome, 155
- battered woman's syndrome, 146
- Baum, Kathleen Kelly, 211, 214, 221
- Baxter, Meredith, 176, 177
- Becker, Susanne, 42
- Bell, Bernard W., 55, 80; *The Afro-American Novel and Its Tradition*, 55
- Bellows, Gil, 209
- Bennington, Annette, 29; *Beyond Portia: Women, Law, and Literature in the United States*, 29, 223
- Bentham, Jeremy, 31, 37–38, 48, 53, 150; *The Panopticon Letters*, 150
- Bergman, Paul, 189, 224n22
- Bernardo, Paul, 226, 244n22
- Best, Stephen, 58
- The Betty Broderick Story*, 176
- Bingham, Dennis, 183, 184, 187, 188
- Birch, Helen, 15, 176–77
- Biressi, Anita, 40
- birth mothers, 72
- black child, 94. *See also* racially mixed children; slave children
- black face, 76
- black females, 62
- black feminists, 60
- black men, 64, 79, 92, 93, 111, 113
- black mothers, 64. *See also* African American mothers
- black perpetrators, 19
- black slave women, 58, 80
- black slaves, 63, 87, 101
- black wetnurse, 100

- black women, 62, 64, 66, 83, 88, 93, 94, 103
- Black Snake*, 92
- blacks, 10, 61, 72, 74, 81
- Blossingame, John, 59
- Bloody Babs, 182, 184, 185. *See also* Graham, Barbara (Bonnie).
- Bohjalian, Chris: *Midwives*, 27, 107, 128, 140–46
- Boire, Gary, 7, 21–24
- Borden, Emma, 160, 164
- Borden, Lizzie, 28, 151, 160–64, 170
- Born with Two Mothers*, 64
- Boudreau, Kristin, 75
- Bourdieu, Pierre, 125, 138, 143, 144, 149
- Boston Prison Discipline Society, 39
- breastfeeding, 107–8, 144
- Breastfeeding Bill (Scotland), 107–8
- Brecht, Bertholt: *The Caucasian Chalk Circle*, 104
- Bridgewater, Pamela, 114
- Bridget Jones*, 179
- British False Memory Society, 121
- Broderick, Betty, 176–77
- Brooks, Peter, 237, 238
- Broomfield, Nick, 178, 264n20; *Aileen: Life And Death Of A Serial Killer*, 178; *Aileen Wuornos: The Selling Of A Serial Killer*, 178; *Overkill*, 178
- Butler, Judith, 150, 162
- Butler, Octavia: *Kindred*, 62
- Cahn, Naomi, 147
- Callaghan, Morley, 7, 21, 24, 39; “A Wedding-Dress,” 7, 21–24
- Canada, 17, 21, 25, 108, 226. *See also* Kingston, Ontario; Canada, Upper
- Canada, Upper, 37
- Canadian High Commission, 241n33
- Cannings, Angela, 124
- Cannon, Dyan, 210
- canonicity, 4, 5, 6, 7–12, 66, 67, 74, 86, 116, 154, 156, 240n23, 262n1
- Carby, Hazel, 59
- Cardozo, Benjamin, 2; *Cardozo Studies in Law and Literature*, 7; “Law and Literature,” 2
- Caron, Roger: *Go Boy*, 36
- Carson, Lisa Nicole, 211
- Carter, Angela, 6, 25, 31–36, 40, 53, 54, 58, 227; *Nights at the Circus*, 6, 25, 31–36, 44, 47, 53
- Chase, Anthony, 222
- Chicago*, 151
- Chicana mothers, 106
- child abuse, 26, 109, 110, 112, 122, 123, 146, 252–53n13
- child deaths, 15, 26, 81, 106, 109, 112, 123, 175, 226
- child drowning, 26, 111, 116, 175
- child homicides, 65, 110–18
- child molesters, 131, 257n84
- child murderer, 16, 82, 83, 124, 226
- child pornographers, 111
- child sexual abuse, 27, 107, 121, 122, 133
- childbirth, 18, 27, 111, 141
- children’s rights, 108, 109
- Chinn, Sarah E., 61, 94
- Chronic Fatigue Syndrome, 124
- Christianity, 116
- A Civil Action*, 172
- civil rights movement, 58, 61
- Clark, Sally, 124, 257n75
- Class Action*, 172
- conjugal rights, 217
- Connor, Steven, 149, 152–53
- contemporary mothers, 75, 250n65
- Cooper, J. California, 25, 26, 227; *Family*, 25, 65, 66, 69–74, 78
- Cornwell, Patricia: *The Body Farm*, 123; *Postmortem*, 256n74
- Cosmo*, 201, 207
- Coughlin, Anne, 19, 20, 247n8
- Court of Appeals, First District of Texas, 175
- Craft, Ellen, 101, 252n105
- Craft, William, 101, 252n105
- Crane, Gregg D.: *Race, Citizenship and Law in American Literature*, 59
- Creighton, John, 40, 41
- criminal mothers, 112
- Critical Legal Scholars, 1
- Crown Prosecution Service, 111
- Culp, Jerome, 4, 240n18
- Currie, Claudia, 14, 28; *Too Few to Count: Canadian Women in Conflict with the Law*, 165
- D’Aguiar, Fred, 69
- Daniels, Sarah, 27, 28, 151–52, 165–71, 227; *Masterpieces*, 27, 28, 151, 165–71
- date rape, 18
- Davies, Carole Boyce, 73–74
- Davis, Kimberly Chabot, 75, 77
- Davis, Tracy, 166, 168
- Dayton, Kim, 110, 132, 147

- death sentence, 86, 110
 defense lawyers, 114, 158, 160, 162, 190
 Delgado, Richard, 4, 5, 74, 240n18;
 "Norms and Narratives: Can Judges
 Avoid Serious Moral Error?," 5
 Denvir, John: *Legal Reelism: Movies as
 Legal Texts*, 173
The Dick Van Dyke Show, 125
 Dietz, Park, 117, 175–76
 Desai, Gaurav, 8
 disabled mothers, 106
 Dixon, Evelyn, 17
Dixon vs. the United States, 17
 Doane, Mary Ann, 183, 199, 200
 domestic violence, 18, 108, 109, 120, 168,
 234, 260nn21, 22
 Douglass, Frederick, 59
 Downey, Robert, Jr., 210
 drama, 27, 28, 30, 64, 118, 122, 148,
 149–71, 174, 177, 181, 187, 196, 201,
 222
 drowning, 26, 63, 111, 116, 126, 132, 175
 Drzal, Dawn, 137, 138
 Durst, Ilene, 128, 228, 257n80
 Dworkin, Andrea: *Pornography*, 166
 Dworkin, Ronald, 6, 67–68; "How Law
 Is Like Literature," 68

 Easton, Pam, 118
 Elliott, Mary Jane Suero, 82–83
Erin Brockovich, 172
 European American women, 26, 58,
 246n2
 Ewell, Tom, 190

 Faith, Karlene, 165, 178, 225, 234; *Unruly
 Women: The Politics of Resistance
 and Confinement*, 225
 Falkow, Michele G., 5
 False Memory Syndrome Foundation, 121
Famous American Crimes and Trials, 113
 Farley, Shannon, 111
 female criminals, 15, 16, 17, 33, 53, 226;
 media representations of, 17, 226.
 See also specific crime, e.g., child
 murderers
 female killers and television, 174–80
 female offenders, 16, 28, 29, 160, 165,
 224–25, 226
 female prisoners, 16, 25, 31–36, 42–54,
 187; characteristics, 113
 female serial killers, 177, 178, 179
 female slaves, 26, 62, 65, 66, 90. See also
 black slave women
 feminism, 3, 5, 7, 11, 12, 14, 20, 104, 112,
 147, 193, 207, 209, 211, 215, 216, 219,
 229; impact on popular culture, 237.
 See also postfeminism
 feminism, Anglo-American, 13, 105
 feminist critics, 3, 6, 9, 12, 27, 31, 106,
 147, 151, 156
 Ferguson, Robert, 3
 Filetti, Jean S., 162
 filicide, 26, 119
 Findlay, Tom, 114
 Fineman, Martha Albertson, 12, 14, 106,
 229, 238
 Fish, Stanley, 6, 11, 157
 Fisher, Amy, 176
 Flockhart, Calista, 208
 Ford, Janet, 110, 111, 112, 113, 115
The Forgotten, 105
 Foucault, Michel, 31, 32, 34, 36, 38, 39,
 48, 50, 53, 54
 Fox, Marie, 53, 159–60, 162
 Fox-Genovese, Elizabeth, 83, 84
 French, Kristen, 244n22
 French, Nicci: *The Memory Game*, 123
 Freud, Sigmund, 9, 49
 Fugitive Slave Act, 80, 85, 91
 Fugitive Slave Law, 59, 80

 Garner, Margaret, 25, 75, 76, 77, 78, 79,
 82, 84
 Gass, Joanne, 33
 Gates, Henry Louis, Jr., 60, 88; *Loose
 Canons*, 60
 Gavigan, Shelley, 146
 Gemmette, Elizabeth Villiers, 11–12
 gender differentiation, 14, 15, 106, 146,
 193, 201, 267n76
 Gere, Richard, 151
 Gilligan, Carol, 222
 Gilman, Charlotte Perkins: "The Yellow
 Wallpaper," 117
 Glaspell, Susan, 27, 151, 153–60, 222, 227;
Trifles (aka "A Jury of Her Peers"),
 12, 27, 151, 153–60, 164, 165, 168, 170
 Goodman, Nan, 104
 Gothic fiction, 42, 48, 49, 50
 Graham, Barbara (Bonnie), 28, 172,
 180–89, 264n32. See also Bloody
 Babs.
 Graycar, Regina, 147
 Great Books, 8, 67, 228
 Great Britain, 21, 64, 106, 110, 111, 123,

- 173, 174, 226–27. *See also* United Kingdom
Greenfield, Stephen, 172, 174, 189, 221, 222
Griffin, Gabriele, 170
Grisham, John, 172
Guilty as Sin, 189
Gulf War Syndrome, 124
- Hagen, Jean, 194
Haley, Alex: *Roots*, 86
Hallgren, Sherri, 156
Halliday, Phyllis, 36
Hamilton, Jane, 26, 106; *A Map of the World*, 26, 106, 125–32, 134
Harris, Angela P., 55, 57, 171
Harrison, Suzan, 58, 91
Hart, Lynda, 178
Harvard Law School, 202, 203, 209
Harvard Women's Law Journal, 29
Hays, Will, 180
Hays Code, 180
Hayward, Susan, 180, 182, 183, 184
Heartbeat, 124
Heberle, Renee, 155, 260n22
Heilbrun, Carolyn, 1, 12, 17, 18, 19, 29, 129, 223; “Convergences: Law, Literature, and Feminism,” 17, 29
Heinzelman, Susan Sage, 29, 115–16, 227; “Hard Cases, Easy Cases and Weird Cases: Canon Formation in Law and Literature,” 115; *Representing Women: Law, Literature and Feminism*, 29
Hempel, Anouska, 92
Henderson, Carol, 91
Henderson, Mae, 92
Hepburn, Katharine, 172, 190
Higgins, Lesley, 65
Hill, Anita, 60
Hill, Belinda, 117
Hindley, Myra, 17, 226
Holland, Norman, 42
Holliday, Judy, 190
Holloway, Karla, 59, 60, 61, 94; *Codes of Conduct*, 59
Hollywood, 172, 179, 180, 189, 205, 206, 207, 214
home birth, 107, 140, 141
homicides, 65, 110, 111, 112, 113, 115
Homolka, Karla, 17, 226–27, 244n22
hooks, bell, 57, 88
The Hours, 179
Human Fertilisation and Embryology Act (Great Britain), 110
Hutchings, Peter, 43–44, 46, 47, 163
I'm No Angel, 172
infanticides, 65, 75, 79, 82, 83, 84, 85, 86, 106, 110, 111, 112, 115, 118, 133, 146
The Insider, 172
Inspector Morse, 174
ITV3 (television channel), 174, 263n8
IVF, 64, 110
- Jackson, Kate, 212, 266n62
Jackson, Michael, 257n84
Jacobs, Harriet: *Incidents in the Life of a Slave Girl*, 69, 95
Jacobs, Michelle S., 108–9
Jagged Edge, 189
Johnson, Anna, 63, 253–54n19
Johnson, Holly, 225
Johnson, Jennifer, 64, 253–54n19
Jones, Gayl, 62, 248n36; *Corregidora*, 62
Jones, Jennifer, 153, 162
- Kay, Jackie: *The Adoption Papers*, 105
Kaye, Neil, 117
Kekeh, Andrée-Anne, 88
Kelley, David E. 208, 221
Ken and Barbie Murders, 226
Kennedy, Helena, 122
Kidman, Nicole, 179
killers, 84, 256–57n74. *See also* specific type, e.g., child murderers
King, Nicole R., 63, 88
King Lear, 122
King Solomon, 104
Kingston, Ontario, 36. *See also* Kingston Penitentiary
Kingston Penitentiary, 25, 36–48, 53, 241n33, 242n22
Kinnear, Thomas, 36, 39, 43
Klassen, Pamela E., 141
Knelman, Judith, 45
Kolodny, Annette: “Dancing through the Minefield,” 20
Ku Klux Klan, 72
- L.A. Law*, 173, 174, 217, 263n8
La Cruz, Anita, 199
The Lady Objects, 172
Langford, David A., 172
Latina mothers, 106
Lauret, Maria, 246n2

- Law and Literature*, 7
 law and literature movement, 1, 2–12, 14, 17, 29, 53, 57, 59, 65, 67, 69, 74, 86, 96, 106, 117, 119, 133, 147, 149, 154, 155, 156, 224, 228, 229, 236, 237
- Law and Order*, 175
Law and Popular Culture, 5
 law films, 172–73, 262n11
Laws of Attraction, 172
 lawyers, 2–4, 6, 9, 20, 21, 23, 27, 43, 45, 47, 56, 63, 68, 99, 108, 115, 117, 127, 129, 131, 135–36, 138–39, 142–44, 150–52, 159, 172–74, 187, 188, 191, 194, 198, 201, 208, 213, 218, 219, 228, 230–31, 235, 254n24, 264n32; defense, 114, 158, 160, 162, 190; male, 190, 193, 203; women, 174, 189–90, 201, 205, 206, 208–9, 212, 214, 215, 217, 221–23, 265–66n55
- Lear (king). *See* King Lear
 Ledwon, Lenora, 68, 222, 228
Legal Fictions, 3
Legally Blonde, 28, 172, 174, 201, 206–8, 265–66n55
Legally Blonde II, 265–66n55
 Leps, Marie-Christine, 65
 lesbian killers, 179
 lesbian mothers, 106
 lesbianism, 46, 48, 49, 51, 52, 54, 100, 178, 226, 263n5
 lesbians, 218, 262n11
 Leslie, Marina, 122
 Levinson, Sanford, 4, 240n17
 Liberation Question Book, 42
 Liberty Questions, 48
 literary canon. *See* canonicity
Lolita, 176
 London, 26, 165. *See also* Millbank Prison
 London, Ephraim, 2
 Lydon, Mary, 245n34
- MacKinnon, Catherine A., 13, 55; *Are Women Human, and Other International Dialogues*, 241n50
 Mahaffy, Leslie, 244n22
 male lawyers, 190, 193, 203
 male prisoners, 23, 37
 male slaves, 92
 March, Cristie, 46
 Marks, Grace, 32, 36, 39–48, 53, 187
 Marshall, Paule: *Daughters*, 60, 248n25
 Martin, Valerie, 25, 89, 101, 102, 227;
- Property*, 25, 26, 58, 65–66, 95–96, 252n105
 McBeal, Ally. *See* Ally McBeal
 McDermott, James, 36, 39
 McDowell, Deborah, 58, 87, 93, 94
 McLaurin, Melton: *Celia, a Slave*, 63
 Meadow, Roy, 123–24, 257n75
 “Meadow’s Law,” 124
 midwives, 27, 106, 107, 140, 141, 143
 Millbank Prison, 25, 48, 49, 50, 51, 53, 54
 Miller, Austin, 56
 Miller, Carolyn Lisa, 189, 207, 208
 Miller, Sue, 26, 107, 132, 133, 135, 136, 137, 258n90; *The Good Mother*, 26–27, 107, 132–40
 Miranda, Ernesto, 264n32
Miranda v. Arizona, 264n32
 Misrahi-Barak, Judith, 65
 Monahan, Mabel, 182, 188
Monster, 28, 177, 178, 179, 189
 Montgomery, Nancy, 36, 39, 43, 46
Montreal Gazette, 244n22
 Moodie, Susanna, 39, 44; *Life in the Clearings*, 44
 Moore, Julianne, 105
 Mosely, Rachel, 208
 motherhood, 25, 26, 27, 58, 63–64, 74, 80–86, 103, 104–7, 115, 119, 125, 132, 133, 134, 137, 146, 147, 221, 227, 232, 250n65. *See also* African American mothers; birth mothers; black mothers; Chicana mothers; contemporary mothers; criminal mothers; disabled mothers; Latina mothers; lesbian mothers; poor mothers; slave mothers; surrogate mothers; white mothers; working mothers
 mothers who kill, 113–25, 175
 Motion Picture Production Code, 28, 180
 Morris, Allison, 15, 112
 Morrison, Toni, 5, 25, 26, 58, 61, 63, 65, 66, 68, 74–85, 227; *Beloved*, 5, 25, 63, 65, 66, 68, 69, 74–85, 86, 100, 249n55, 253–54n19
 Mulvey, Laura: “Visual Pleasure and Narrative Cinema,” 32
 Munchausen’s Syndrome by Proxy (MSP), 123, 124
Murder One, 173
 Murphy, Thérèse, 19
 Musial, Jennifer, 64
 Myers, Alice, 16

- Nair, Supriya, 8
 Native Americans, 61
 Neonaticide Syndrome, 111
 neoslave narratives, 25, 55–103, 246n2, 248n36
New Formations, 3
 New Testament, 116
 New York, 2, 41, 42, 48, 159, 221
New York Chronicle, 191
New York Sun, 162
 Newman, Kathleen, 216
 Nochimson, Martha P., 216, 219
 North America, 141, 225
 North American, 39
Nuts!, 179
- Oates, Joyce Carol, 7
 Oberman, Michelle, 111–12, 114–15, 118, 119, 146
 O'Hare, Sheila, 187
 Old Testament, 116
 Olsen, Frances, 14
On the Up, 237
 Ontario, Canada, 25, 36, 37, 244n22. *See also* Kingston, Ontario; Kingston Penitentiary
Oprah Winfrey, 176
 outsider scholarship, 19
- Palmer, Paulina, 49, 50
 Paltrow, Gwyneth, 179
 panopticon, 6, 25, 31–35, 37–38, 46–54, 150
 Papke, David R., 4, 240n18; *Narrative and Legal Discourse*, 4
 Patel, Trupti, 124
 Patterson, Orlando, 59, 62
 Patton, Tracey Owens, 211, 266n58
 Penitentiary Act, 37, 39, 47
 Perkins, Emmett, 182, 183, 186, 188
 Perlin, Michael L., 112, 113, 114, 115
 Perry, Imani, 57
Perry Mason, 173
Philadelphia, 172
Phinney v. Morgan, 256n67
 Plank, Tonya, 74, 146
 playwrights, 27, 149, 151, 153, 165
 Pollock, Sharon, 27, 28, 151, 160, 227; *Blood Relations*, 27, 28, 150, 151, 160–64, 165, 170
 Polloczek, Dieter Paul, 3, 4
 poor mothers, 106
 Posner, Richard, 2, 3, 6–8, 10, 11, 156, 159, 238
 postegalitarian feminism, 13–14, 18, 20, 30, 56, 105, 120, 146, 217, 229
 postfeminism, 206, 207, 211, 215, 216, 221
The Practice, 173, 174, 221, 263n8
 premenstrual syndrome (PMS), 146, 170, 213
 prison population–United Kingdom, 16
 prison reformers, 39, 41
 prisoner, virtual, 40
 prisoners, 37, 39, 53, 186; conjugal rights, 217. *See also* female prisoners, male prisoners
 prostitutes, 165, 167, 177, 178, 210, 212, 214, 215
 prostitution, 28, 51, 112, 166
- race, 8, 10, 13, 19, 26, 55, 57, 58, 59, 60–64, 105, 111
 racially mixed children, 64, 72–73, 105
 Rampersad, Arnold, 58
 rape, 18, 28, 56, 66, 71, 74, 76, 78, 79, 80, 84, 85, 98, 166, 167–68, 178, 238, 250n66; attempted, 93; laws, 63, 258n94; marital, 18; oral, 66; trials, 169
 Read, Jacinda, 208, 210, 211
 Recovered Memory Syndrome, 121
 Resnik, Judith, 1, 12, 17, 18, 20, 27, 29, 129, 150, 223; “Convergences: Law, Literature, and Feminism,” 17, 29
- Rice, Alan, 82
 Roach, Kent, 234
 Roberts, Dorothy E., 106, 112, 132
 Robertson, Cara W., 162–63
 Robson, Peter, 172, 174, 189, 221
 Rodgers, Karen, 225
 Rody, Caroline, 79, 80
 Ross, Josephine, 257n83
 Rushdy, Ashraf H. A., 55, 62, 75, 86, 93, 102
 Rustin, Michael, 61
- San Francisco Examiner*, 185
 Sanger, Carol, 12, 133, 258n98
 Santo, John, 182, 184, 186, 188
 Savage, Stephanie, 176
 Schaller, Barry R.: *A Vision of American Law*, 7
 Scheppele, Kim Lane, 20, 129, 150
 Schreiber, Flora Rheta, 122; *Sybil*, 122, 256n69
 Schur, Richard, 55

- Scotland, 70, 107, 108
Seinfeld, 219, 221
 serial killers, 179. *See also* female serial killers
 sexual harassment, 18, 28, 120, 168, 209–10, 212, 215, 218, 220
Shallow Hal, 179
 Sharpe, Tony, 2
 Sherman, Leona, 42
 Sherwin, Richard K. 174
 Showalter, Elaine, 121–22, 124, 257n76;
 Hystories, 121
 Shumway, David R., 198, 201
 Shyamalan, M. Night: *Sixth Sense*, 123
 Simon, William H., 204
 Simon, Marilyn: *The Convict Lover*, A
 True Story, 36–37
 Simpson, O. J., 116
 Sirianni, Samuel, 185
 Skrapec, Candice, 179
 slave children, 26, 62, 63, 65, 69–75, 77, 79, 81, 85, 90
 slave mothers, 58, 65, 69, 75, 82
 slave rebellion, 57, 85, 86, 88, 89
 slavery, 26, 54–103, 227, 248n36, 252n105.
 See also black slave women; black slaves; female slaves; Fugitive Slave Act; Fugitive Slave Law; male slaves
 Smart, Carol, 14–15, 146, 152
 Smiley, Jane; *A Thousand Acres*, 122
 Smith, Alex, 113
 Smith, Felipe, 8
 Smith, Michael, 113
 Smith, Susan, 26, 111, 113
Snuff, 166
 Snyder, Ruth, 27, 159, 170, 187
 Solomon (king), 104
 South Carolina, 26, 111, 113–19
 Spillers, Hortense, 70, 73, 74, 78, 97, 103
 St. Joan, Jacqueline, 10, 29, 157; *Beyond Portia: Women, Law, and Literature in the United States*, 29, 223
 Stansell, Christine, 57
 Stefancic, Jean, 5, 74: “Norms and Narratives: Can Judges Avoid Serious Moral Error?” 5
 Stepto, Robert, 59
 Stone, Sharon, 179
 Streisand, Barbra, 179
 Strickland, Rennard, 174
 Styron, William, 57–58, 88, 92; *The Confessions of Nat Turner*, 57
 Sudden Infant Death Syndrome (SIDS), 123, 257n75
 surrogate mothers, 110, 253–54n19
Suspect, 189
 Sutton Glen, 87, 91
 Sweet Home, 68, 75, 78, 81
Sybil, 122
 Taylor, C. J., 37–38, 39; “The Kingston, Ontario Penitentiary and Moral Architecture,” 37
 Taylor, Katherine, 109–10
 Texas, 26, 117, 118, 175
 Theron, Charlize, 177, 179
This Life, 173
 Thomas, Clarence, 60
 Thomson, Michael, 12
 Thorne–Smith, Courtney, 209
 Tobin, Elizabeth, 63, 65, 82, 110, 147, 253–54n19
 Tracy, Spencer, 172, 190, 198
 Trapasso, Ann E., 90
 Treadwell, Sopic, 27, 151, 153, 157, 159, 166; *Machinal*, 27, 151, 153, 157, 159, 166, 170, 227
 Turner, Nat, 58
 Turow, Scott, 172
 U.S. Bureau of Justice, 242n63
 Underground Railroad, 81
 United Kingdom (U.K.), 16–17, 92, 108, 119, 124, 166, 215, 253n15, 258n94. *See also* Great Britain
 “usurpatory ventriloquism,” 27, 151
 ventriloquism, 27, 28, 151–52, 162, 166, 171, 194, 231
 Ventura Reform School for Girls, 188
 violent prisoners, 45
 violent women, 15, 160, 176
 Walker, Margaret, 62, 248n36; *Jubilee*, 62
 Wanger, Walter, 182; *I Want to Live!*, 28, 172, 174, 180–89, 191, 196, 228, 264n32
 Warden’s Daily Journals of 1870–74, 41
 Warnecki, Michael. *See* Woroniecki, Michael
 Waters, Sarah, 25, 31–32, 42, 48, 49, 50, 52, 53, 54, 58, 227; *Affinity*, 25, 32, 33, 42, 48–54
 Weinberg, Mark, 92
 Weisberg, Richard, 2, 3, 6–12, 24, 67; *The Failure of the Word: the Lawyer as*

- Protagonist in Modern Fiction*, 7;
 Great Books, 8, 67, 228; *Poethics
 and Other Strategies of Law and
 Literature*, 8, 66–67
- Weisbrod, Carol
- West, Mae, 172
- West, Robin, 6, 12, 13, 17, 28, 55, 59, 104,
 120, 153–54, 155, 156, 169, 215, 229,
 237–38, 243n74; “Economic Man
 and Literary Woman: One
 Contrast,” 13; “Jurisprudence and
 Gender,” 224; *Narrative, Authority,
 and Law*, 29, 104
- West, Rose, 17
- Wheatley, Phillis, 60
- White, James Boyd, 2, 8, 153; *The Legal
 Imagination*, 2
- White, Roberta, 137, 258n90
- white children, 100
- white male, 5, 60, 62, 64, 67, 88, 90
- white mothers, 64
- Whitehead, Mary Beth, 253–54n19
- Whitehouse, Mary, 264n23
- Whitney, Mary, 32, 43, 44
- Wight, Sarah, 16
- Wilczynski, Ania, 15, 112
- Williams, Patricia J., 12, 18–19, 20, 56, 62,
 63, 64, 66, 78, 243n74; *The Alchemy
 of Race and Rights*, 19, 59
- Williams, Sherley Anne, 25, 65, 85–95;
Dessa Rose, 25–26, 65, 85–95
- Winter, Kari J., 95
- Wiseman, Zipporah Batshaw, 29, 115–16,
 227; *Representing Women: Law,
 Literature and Feminism*, 29
- Witteveen, Willem J., 4
- Wolf, Naomi: *The Beauty Myth: How
 Images of Female Beauty Are Used
 Against Women*, 220
- A Woman Scorned: The Betty Broderick
 Story*, 176
- women lawyers. *See* lawyers, women
- women prisoners, 16
- Wood, Jennifer, 27, 151
- Woodard, Helena, 75
- Wolf, Virginia, 179
- working mothers, 125
- Woroniecki, Michael, 255n48
- Worrall, Anne, 15, 106
- Wuornos, Aileen, 17, 28, 177–79
- Yates, Andrea Pia, 26, 113–19, 134, 175,
 187, 255n48
- Yates, Rusty, 118
- Yoshino, Kenji, 228
- Zellweger, Renée, 151, 179
- Zile, Pauline, 109
- Ziolkowski, Theodore: *The Mirror of
 Justice: Literary Reflections of Legal
 Crises*, 3