

# On Trial: Restorative Justice in the Godwin-Wollstonecraft-Shelley Family Fictions

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ON TRIAL: RESTORATIVE JUSTICE IN THE GODWIN-WOLLSTONECRAFT-  
SHELLEY FAMILY FICTIONS

by

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ABSTRACT  
ON TRIAL: RESTORATIVE JUSTICE IN THE GODWIN-WOLLSTONECRAFT-  
SHELLEY FAMILY FICTIONS

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William Godwin, Mary Wollstonecraft, and Mary and Percy Shelley wrote during an era of democratic possibility and intense legal and penal reforms, when changes to criminal justice procedures were adopted that would have far reaching consequences, even for contemporary practices. Their fictions – *Caleb Williams* (1794), *Maria: Or the Wrongs of Woman* (1798), *Frankenstein* (1818), *Falkner* (1837), and *The Cenci* (1818) – raise questions and seek answers to questions at the heart of these reforms: What happens to individuals falsely accused of a crime without the resources to defend themselves? What happens to victims of crimes associated with guilt or shame or who suffer from crimes unacknowledged by the justice system? If direct testimony doesn't guarantee truth, then what good is it? Should criminal procedures seek retribution, deterrence, reform, rehabilitation, or perhaps restoration?

Proceeding chronologically through their texts, my project considers the ways that this literary family addressed these questions. I use the contemporary notion of restorative justice as my frame, attempting to place their works within their own historical eras as well as reflect on how they underscore issues that may be pertinent and pressing – though different – today. Uniquely colliding with both an era of criminal justice reform and an age of democratic revolution, I argue their fictions advocate for individuals disenfranchised from the justice system and imagine alternative models of justice. They imagine criminal procedures that prioritize the victim's, the accused's, and the community's participation in often complex and convoluted truth-seeking processes. They envision outcomes that attempt to repair harm through dialogue, accountability, and consideration of social disparities, rather than merely punishing offenders or deterring individuals from committing future crimes. I suggest, finally, that motivated by a similar desire for equitable, participatory, and restorative conditions, their fictions offer strategies for imagining justice that are both historically progressive and currently relevant.

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Colleen Fenno, B.A., M.A.

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## Introduction

### **On Trial: The Ideal of Restorative Justice in Fiction by the Godwin-Wollstonecraft- Shelley Family**

William Godwin, Mary Wollstonecraft, and Mary and Percy Shelley lived and wrote in an era shaped by questions of legal and personal justice. On the heels of Enlightenment attempts at legal reform and radical fervor following the French Revolution, cultural debate regarding justice intensified at the turn of the eighteenth and nineteenth centuries in England. Professionals from within the criminal justice system, writers of fiction, and individuals reading the various species of popular crime texts – from broadsheets and *Old Bailey Sessions Papers* to criminal biographies and novels – engaged in this discussion in an effort to determine the most fair and efficient criminal justice model.

Considerable changes regarding justice processes and outcomes resulted from these debates about the criminal justice model. Changes in the prosecution of criminal cases shifted regarding the use of circumstantial evidence and direct testimony. Material evidence was first embraced and trusted during trial, and then subsequently doubted, as a means to the certain proof of a crime. Direct testimony gradually and informally transitioned from the “old format” – an altercation between the victim and the accused before a jury, with the judge acting as sole arbiter – to the “new format” – an adversarial system that set two legal advocates against each other, finally culminating in the Prisoners’ Counsel Act of 1836 (Langbein). Criminal justice reforms also took place regarding the desired outcomes of the justice process: as Foucault has so famously

documented, punishment gradually shifted from a public spectacle widely and severely applied in order to serve as a deterrent to a more privately executed, highly regulated penalty intended to rehabilitate the accused. This paradigm shift in punishment led to the development and modernization of the prison system, put forth by advocates such as Jeremy Bentham in his text *The Panopticon* (1791), as well as the increased belief in the possibility of prisoner reform through solitary confinement, put forth by advocates such as John Howard in his text *The State of Prisons* (1777).

Contemporary scholars interested in criminal justice often look back to this era of vast reforms, placing great emphasis on the implications of these changes. They argue that many of the changes resulted in great consequences, both then and now, for the theory and practice of justice: Some scholars argue that changes in this process largely removed the victim and accused from criminal procedures, replacing their participation during trial with participation by prosecution and defense advocates, thus shifting the emphasis from truth seeking to combat and closure (Langbein). Others argue that changes in criminal outcomes led to an emphasis on punitive resolutions, which largely severed the offender from a process of recognizing and addressing the harm his offense had caused in order to focus on retribution or deterrence (Cornwall). Still others argue that these changes affected cultural representations of justice, as literary authors began to both reflect and challenge these shifts in their fictional content and form.

Despite the significance of this era of reform and the substantial value that interdisciplinary approaches have contributed to our understandings of both literary and justice practices during this era, a significant gap in scholarship remains. While studies of literature and law surrounding these transitions have been thorough, much of their

emphasis seems to eschew romantic era texts: much interdisciplinary scholarship lies either during the mid-eighteenth century, when authors such as Henry Fielding and Samuel Richardson explored the use and manipulation of circumstantial evidence for story telling in their fiction, or later in the nineteenth century, when authors such as Charles Dickens and George Eliot used their realist texts to give voice to the accused and critique the way defense counsel had usurped the defendant's role during trial.<sup>1</sup> Each of these studies helps to clarify the relationship between literary form and legal modernization as well as deepen understanding of the connection between literary content and legal subject matter; however, a gap still remains involving fictional authors writing during the turn of the eighteenth and nineteenth centuries, who may have been influenced not only by particular criminal justice reforms but also by the wider cultural event of the French Revolution.<sup>2</sup>

Codification and regulation of criminal laws, shifts in truth-seeking processes, and changes to penal outcomes were gradual and ongoing during the late eighteenth and early nineteenth centuries, but certainly the events of the French Revolution interrupted and radically shaped our cultural understandings of fair and equitable justice reform. The extreme violence that erupted on the continent shattered hopes, both in France and

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<sup>1</sup> See for example Alexander Welsh's landmark study *Strong Representations* (1992), Jan Melissa Schramm's *Testimony and Advocacy in Victorian Law, Literature, and Theology* (2000), and Hal Gladfelder's *Criminality and Narrative in Eighteenth Century England: Beyond the Law* (2001).

<sup>2</sup> Nancy E. Johnson's *The English Jacobin Novel on Rights, Property, and Law* (2004) considers Jacobin texts, but her study does not extend to Romantic era texts. Jonathan Grossman's, *The Art of Alibi: English Law Courts and the Novel* (2002), is one of the few full-length studies that considers romantic era texts – both *Caleb Willaims* and *Frankenstein*. While Grossman argues that, generally, the law court and the novel shared a “cultural and historical entwining” (4), my emphasis is more concerned with the specific justice model for which novels by the Godwin-Wollstonecraft-Shelley family seem to advocate and how democratic reforms were linked to this model. Christine Krueger also considers several texts from the turn of the century in her recent study, *Reading for the Law* (2010), which spans the early modern period to the Victorian. Krueger's study takes on a wider breadth than my own, focusing on “outsider jurisprudence” in literature, law and history through the lens of concepts such as precedent, agency, testimony, and motive (3). My focus is both chronologically narrower (1790s – 1837), less specific conceptually (democratic reform and the justice model), and focused on fictional texts by one influential literary family.

abroad, for a peaceful and progressive transition to a more representative government and equitable justice system. Instead, democratic ideals seemed to dissolve as the new ruling class in France adopted the same abusive practices as the previous oppressors. In England, fear of an uprising similar to the Revolution gave rise to a climate of censorship and state control both immediately following, and in the years after, the events in France. During the 1790s, sympathizers with the cause of the Revolution became suspect and even criminally prosecuted, as manifested in events such as the Treason Trials and suspension of habeas corpus. Decades later, in 1817, habeas corpus was again suspended, imprisonment without trial was legalized, and “gagging acts” were introduced to prevent meetings of more than fifty people (Foot 32). The Peterloo Massacre, an uprising staged by frustrated workers, resulted in further reactionary governmental responses such as the Six Acts in 1819. For individuals who witnessed the promise of the uprising as well as the violent and repressive fallout that followed, the Revolution made a very profound mark on their understanding of justice and how it should be applied.

Literary texts treating issues of legal or penal reform that were written surrounding and following the French Revolution offer considerable breadth for reflections on justice beyond the realist works that have previously been studied. Such a breadth offers, on the one hand, Jacobin texts that address individual rights and democratic reform through often didactic, sometimes dogmatic, prose fiction, and, on the other hand, gothic texts that covertly and subversively examine power relations through the dark psychology of individual characters. The value of considering both genres, and the many, many deviations and overlaps between them, arises from the shared desire to reach a wide, popular audience and the shared spirit of reform, which underlies both

representational approaches. The fictional texts that treat issues of justice by William Godwin, Mary Wollstonecraft, and Mary and Percy Shelley provide an excellent starting place for considering justice during this transitional era in law and literature.

To begin, *Caleb Williams* (1794), *Maria: Or the Wrongs of Women* (1798), *Frankenstein* (1818), *Falkner* (1837), and *The Cenci* (1819), demonstrate these authors' investment in individual rights and justice reform. Each of the family's fictions, and in many cases their non-fiction tracts as well, offer different historical entry points for considering how justice was imagined and represented as the democratic ideals of the French Revolution inched further and further away in time. Beyond this larger historical scope, a consideration of their texts is also worthwhile on a more personal, particular level. A survey of this one family's literary texts demonstrates the interdisciplinary and interfamilial nature of cultural debate: as fiction writers, the Godwin-Wollstonecraft-Shelley family engaged in the major legal, political, and social conversations of their historical era. Each of their texts builds on and modifies concepts of the previous. Despite the wealth of scholarship available on this Godwin, Wollstonecraft, and Mary and Percy Shelley, very few scholars consider the interplay between all four of the authors' works.<sup>3</sup> Moreover, there is no study currently available that addresses the contributions their fictions make to discussions of criminal justice during this age of reform.

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<sup>3</sup> Julie Carlson's *England's First Family of Writers: Mary Wollstonecraft, William Godwin, Mary Shelley* (2007) provides one recent exception. Her book focuses on themes related to writing, living, and dying in the family's texts. Carlson's study provides a fine model for considering the family's texts together – and establishes the currency and relevancy of doing so – although her book places little emphasis on Percy Shelley. The addition of Percy Shelley makes for interesting additions to the family's intertextual conversations, particularly concerning the way his work shows (the extremely under-estimated) influence of Wollstonecraft.

With this in mind, my project proceeds chronologically through their texts, searching their fiction for answers to questions about the nature of how one ideal of justice arose out of their historical era of debate. It seeks answers to questions that were being revisited, and in some cases, asked for the first time. At the heart of the debate were questions about the truth seeking and legal processes: What happens to individuals falsely accused of a crime without the resources to defend themselves? What happens to victims of crimes associated with guilt or shame or who suffer from crimes unacknowledged by the justice system? If direct testimony doesn't guarantee truth, then what good is it? Questions about the desired outcomes of justice processes were also at stake in the debates: should criminal procedures seek retribution, deterrence, reform, rehabilitation, or perhaps restoration?

In considering the ways that this literary family addressed these questions in their texts, I not only attempt to place their works within their own historical eras, but I also use the contemporary notion of restorative justice in order to frame my inquiry. As I explain more fully in the methodology section that follows, such a frame allows me to consider their shared principles using a cohesive approach that seems organic to the ideas they imagine in their fiction. It allows me to reflect on how their texts underscore issues which were significant in their own historical eras as well as pertinent and pressing – though different – today. Using restorative justice as a frame, further, suggests how this family's fictions offer imaginative ways to think about justice, which are both historically rooted and currently relevant. Uniquely colliding with both an era of criminal justice reform and an age of democratic revolution, I argue that their fictions envision criminal procedures that recognize the circumstances of the disenfranchised by imagining truth-

seeking processes that promote individual participation by victim, accused, and community, regardless of status. I argue that they envision outcomes that seek to repair harm through dialogue, accountability, and consideration of social disparities. I suggest, further, that motivated by a similar desire for equitable, participatory, and restorative conditions, their texts anticipate contemporary justice models, in particular, the ideal of restorative justice.

My first chapter addresses the earliest of their texts, Godwin's novel *Caleb Williams*. In this chapter I consider how Godwin differs from his contemporaries of the "Classical" criminal justice school – such as Bentham or Howard – by imagining an alternative to punitive criminal justice models. I argue that the novel highlights the ways in which Caleb (and other) disenfranchised individuals suffer from unfair legal definitions of crime, impartial arbiters, inconsistent processes, and ineffective punitive outcomes. Throughout each of these critiques, I suggest that Godwin draws his readers' attention to the harms this corrupt criminal justice system poses to individual and community alike and the ways in which punitive measures (such as incarceration or solitary confinement) neither deter crime nor reform criminals. I posit that Godwin's addition to the family's overall contribution to the criminal justice debate lies in his vision of a more democratic, participatory alternative to the adversarial and retributive system his novel critiques. I suggest that in the novel's final scene, the trial between Falkland and Caleb, Godwin imagines a justice process that seeks disclosure of social imbalances contributing to criminal behavior, recognition of the victims' unique experiences, and inclusion of the community in determining outcomes and solutions to crime. Further, in depicting a justice process that allows both Caleb and Falkland to

participate, I argue that Godwin shows the benefits of testimony to the justice process: Caleb helps to clarify the truth of the events and also receives acknowledgment from his community, and Falkland recognizes Caleb's suffering and admits to his own guilt.

My second chapter argues that, in her unfinished novel *Maria: or the Wrongs of Women*, Wollstonecraft extends Godwin's treatment of unfairly accused individuals in the justice system by considering inequities against disenfranchised victims— a topic Godwin touches on in *Caleb Williams* but does not develop. As critics have noted, Maria's testimony at the end of the novel challenges women's exclusion, based on property rights, from participation in the justice system and underscores the importance of granting individuals the right to be heard in a legal setting. Beyond critiquing injustice towards middle-class women disenfranchised from the civil justice system, I argue that Jemima's narrative represents female victims in criminal law who likewise may not be heard. I draw on historical research regarding class and sexual crime to argue that Wollstonecraft's novel shows how gender, social status, and the nature of a crime made reporting and pursuing prosecution difficult for many female victims. When Wollstonecraft grants Jemima first person ownership of her narrative in chapter five, I posit that she establishes the value of testimony as integral to acknowledging an individual's autonomy, regardless of social standing. I suggest that Wollstonecraft demonstrates how the opportunity to speak about private abuse, and to be heard, aids in a victim's conception and recovery of self. Finally, I argue that Wollstonecraft anticipates the need for a public space to acknowledge abuse in order to expose and correct injustice.

My third chapter considers the contributions which Godwin and Wollstonecraft's daughter, Mary Shelley, makes to the family's fictional vision of justice. I argue that,

beyond her parents' treatment of unfairly accused individuals and marginalized victims, Mary Shelley draws our attention to the complex situation of the offender. I consider her representation of offenders as it evolves from her first novel, *Frankenstein*, to her last novel, *Falkner*, positing that Shelley develops her parents' vision of justice in three ways from *Frankenstein* to *Falkner*. First, I argue that she continues to critique and comment on judicial processes and outcomes in both novels, but in her later novel her critique lessens substantially. Second, I argue that she considers the balance between individual and systemic responsibility in the evolution of criminal behavior. She shifts from an emphasis on the role institutions play in contributing to a criminal's development in *Frankenstein* to a greater focus on individual accountability in *Falkner*. Third, I argue that she returns to and extends her parents' justice model; she conveys the obstacles standing in the way of a more restorative justice model in *Frankenstein* and imagines potential solutions to these barriers in *Falkner*. I argue that in both novels Shelley underscores the significance of recognizing an offender's experiences through testimony and the critical need for taking responsibility within a criminal justice model seeking to repair harm. In Chapter Three, I also attempt to acknowledge the vast changes taking place in literature and criminal justice over the course of her two novels' publications, and discuss how these changes may account for her shifting representations.

In my fourth and final chapter I focus on Percy Shelley's play *The Cenci*. I argue that, although the play seems superficially opposed to the family's visions of justice because the victim arranges for her father's murder, *The Cenci* makes a valuable contribution to this intertextual conversation about justice. As Godwin does in *Caleb Williams*, Shelley's play represents a justice system founded on corrupt processes and

outcomes that fails to restore harm or produce truth. Like Wollstonecraft's novel, it draws attention to the trauma of sexual crime, but it also emphasizes the challenges of articulating this trauma in a nineteenth-century English criminal justice system that demands chastity and a contained, authorized language in which to express the crime. In depicting the damaging effects of silencing marginalized individuals and providing no opportunity for recognition, I suggest that Shelley's play replicates his family's texts by considering the circumstances that contribute to criminal behavior. I argue, further, that *The Cenci* extends their consideration of justice by complicating the accountability and remorse for which *Frankenstein* and *Falkner* seem to advocate: Shelley implies that accountability is impossible when the justice system and wider culture enforce silence in order to achieve closure. Finally, I acknowledge that the content of *The Cenci* elides restorative representations, but I insist that the play's form does not. I suggest that Shelley's literary choices about narrative voice and dramatic representation embody an even more active form than Godwin's, Wollstonecraft's, or Mary Shelley's depictions of justice. This form shows connections between the rhetorical choices called for in both matters of justice and matters of literature, ultimately endorsing an interactive, democratic justice model that grants victims, offenders, and the community the opportunity to participate in processes and outcomes.

**II. Methods, Terms, and Qualifications: “How is it that other people’s creations can be so utterly their own and so deeply apart of us?”<sup>4</sup>**

Regarding my method, as may already be apparent from the language of my introduction, my goal in considering these texts is concerned with both the past and the present. This goal means, first, that I have attempted to place Godwin's,

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<sup>4</sup> Clifford Geertz qtd in Easterling, xv.

Wollstonecraft's, and the Shelleys' fictions in their historical and cultural contexts. I have tried to examine their texts within the age of criminal justice reform and revolution of which they were a part. In order to accomplish this, I have relied heavily on an array of studies, perhaps most frequently John Langbein's *The Origins of the Adversary Criminal Trial* (2003), J.M. Beattie's *Crime and the Courts in England: 1660-1800* (1986), and Anna Clark's *Women's Silence Men's Violence: Assault in England 1770-1845* (1987). These studies have been foundational in moving me towards an informed understanding of how law and criminal justice were practiced in the historical moment when these works were produced. They have shaped my understanding of why, and how, these authors represent justice in their works. This goal means, second, that because I am interested in these fictions not only as a cultural reflection of historic conditions, but also, and more specifically, as an aesthetic response to justice reform, I am also trying to place these texts within their literary era. I draw from a wide array of scholarship in order to place these texts in their literary contexts, including interdisciplinary studies, studies that consider these authors' influences on each other, and stand-alone studies that comment on one of the specific works my project addresses. These studies have helped me to understand that, as Christine Krueger notes, rather than existing separately or opposing one another, literature and law share a "history of...mutual dependency" (11). These studies have also given me the confidence to declare that, based on the quantity and breadth of scholarship available, interest in writing by the Godwin-Wollstonecraft-Shelley family is still thriving. I hope my project adequately reflects this persistent interest and continues to engage it. Finally, as my frequent use of the term "restorative" likely suggests, a third goal of my project is to connect these fictions in a meaningful way

with current issues of testimony, justice, and consideration of the disenfranchised within the twenty-first century. My approach to considering how imaginative texts can enhance our appreciation for, and understanding of, matters of justice has been greatly informed by James Boyd White's [\*When Words Lose Their Meaning\*](#) (1984) and Martha Nussbaum's *Poetic Justice: The Literary Imagination and Public Life* (1986).

Regarding my use of the term “restorative” and my attempt to convey these texts’ relevance to contemporary issues of justice, I need to make a few qualifications. To begin, the term “restorative” is a current descriptor for a very nuanced and varied criminal justice model. It is used and practiced differently in such diverse settings as South Africa’s Truth and Reconciliation Commission to Milwaukee, Wisconsin’s Benedict Center, a nonprofit agency, which serves women in conflict with the law. Despite the term’s multiplicity, each of the many institutions and individuals that employ the term seem to share several key ideas about it as it concerns their application of justice. Cormier’s definition, taken from David Cornwall’s book *Criminal Punishment and Restorative Justice* (2006), adequately reflects these key ideas. Cormier says that restorative justice is:

An approach to justice that focuses on repairing harm caused by crime while holding the offender responsible for his/her actions, by providing an opportunity for the parties directly affected by a crime – victim, offender and community – to identify and address their needs in the aftermath of a crime and seek a resolution that provides healing, restoration, reparation and reintegration, and prevents harm. (88)

Inherent within this definition is the significant role of victim, offender, and community participation within the justice process, as well as the emphasis on a resolution that seeks an alternative to solely punitive outcomes. While these traits reflect our current

understanding, I use the term throughout my project to describe the justice model that I argue William Godwin's, Mary Wollstonecraft's, and Mary and Percy Shelley's fictions imagine, although the term was not contemporaneous with their works. Less than an anachronistic blunder, I use the term "restorative" because it seems deeply connected, as my project hopes to prove, with their representation of justice and the processes and outcomes for which their fictions seem to advocate. In their era the criminal justice debate and democratic reform was expressed in works concerned with a similar desire for inclusive, participatory truth seeking processes as well as outcomes that seek an active, engaged, and empathetic alternative to exclusively punitive resolutions. Using the term "restorative justice" allows me the benefit of uniting their shared principles under one umbrella, and it also shows the progressive and continued relevance of their representations of justice.

In relation to this term, I often bring in contemporary events related to justice in order to draw connections between the past and the present. By making these connections, I do not mean to universalize these fictions' themes in an ahistoric or reductive way. I do not intend to imply that there has been no change or progress in criminal justice administration and understanding. Nor do I intend to suggest that the plight of fictional characters is of the same or equal value to the experiences of contemporary individuals who have been subject to abuse or disenfranchisement within our own era. Finally, I do not wish to collapse the vast differences, nuances, and complications that exist between the nineteenth-century fictional episodes I discuss and the practical application of justice in the twenty-first century. Rather, I mean to show how the issues these texts raise were significant in their own historic eras and are often

still relevant and pressing – though different – today. I intend to show that these texts are worth considering because they provide historic and imaginative ways for thinking about contemporary justice.

My last qualification regards my choice of canonical authors. It seems somewhat paradoxical, in a project concerned with the under-represented, that I would elect to write about texts by Godwin, Wollstonecraft, and the Shelleys. Admittedly, writing about these very well-known authors leaves out a large portion of lesser studied authors who also merit attention. Nevertheless, this family and these texts seemed to have chosen me – the characters on their separate pages spoke to me as if they shared a space together. They engaged me in a reflection on justice that started with their fictions and has stretched well-beyond. In the spirit of dialogue and democracy that was so important to these authors, their fictions have allowed me to join in a large and ongoing conversation with other scholarship addressing what these works meant and what they mean now. Their fictions have also opened my eyes to other people, places, and texts concerned with issues of justice. Drawing on my own experience, then, I believe these works by this much studied family are worth considering anew – their approachability, even popularity, and their narrative contexts make them a feasible place to start undergraduate students and anyone willing to begin thinking and talking about justice in a different way. Given this family's desire for reform, their commitment to citizen engagement, and their intent to reach a wide audience, I think this is a possibility that Godwin, Wollstonecraft, and the Shelleys would appreciate.

**Chapter One**  
**An Alternative Approach to Reform: Restorative Justice in William Godwin's *Caleb Williams***

The object of *Caleb Williams* was to “expose the evils which arise from the present system of civilized society...to disengage the minds of men from presupposition, and launch them on a sea of moral and political enquiry...[to consider] the administration of justice and equity, with its consequences, as it exists in the world at large, and in Great Britain in particular.” – William Godwin (1795)

“In so many parts of the world we have been brought up on a strict diet of retributive justice. What we have experienced in the Truth and Reconciliation Commissions is that retributive justice is not the only and certainly not the best kind of justice.” – Archbishop Desmond Tuto (2006)

In the wake of the violence and possibilities of social transformation offered by the French Revolution, in a decade of severe repression and fear of insubordination in England, and in the midst of cultural debates about individual rights, penal reform, and legal modernization, novelist and prose writer William Godwin (1756-1836) engaged in an historic debate about the most fair and equitable criminal justice model. At the heart of this debate about justice were questions about the truth seeking and legal processes: Should these processes be formal or informal? Should victim and accused participate directly or be represented by advocates? Should trial procedures be public or private? Questions about the desired outcome of these processes were also at stake in the debates: Should criminal processes seek retribution, deterrence, reform, rehabilitation, or perhaps restoration?

Godwin imagines reasoned and progressive responses to these questions in his novel *Caleb Williams* (1794), which anticipates ideas similar to contemporary models of justice. Despite Godwin's responses, however, the voices of criminal justice that emerged the loudest during this “Classical” era of reform, and frequently cited today both

popularly and academically, are Bentham and Beccaria. In *Criminal Punishment and Restorative Justice* (2006), David J. Cornwall states that, “historically, the eighteenth century penal philosophers Cesare Beccaria and Jeremy Bentham have been regarded as the founding contributors to the [criminal justice] debate” (Cornwell 54). As founding contributors, Beccaria and Bentham are often credited with planting the seeds of our western criminal systems, which emphasize punishment and retribution as means to reduce crime, rehabilitate criminals, and achieve justice. After over 200 years of systems based on their models, however, with less and less participation by victim and accused in the justice process, as well as increasingly over-crowded prisons, many have been searching for a different model (Cornwall 34).

In the past two decades one justice model alternative to the retributive model that seeks to address both process and outcomes has emerged on an international scale. Professor of Law, Gerry Johnstone, and Executive Director of the Center for Justice and Reconciliation, Daniel W. Van Ness, refer to this model as “a global social movement” (5). This movement is the restorative justice model, implemented in such diverse settings as truth commissions in South Africa (Chapman and van der Merwe) to juvenile courts in New Zealand (McElrea) to local prisons and community prosecution units in urban cities in the United States.

South Africa’s Truth and Reconciliation Commission<sup>5</sup> describes their reasons for adopting this model in a manner that, as we shall see, echoes some of the same rationales behind William Godwin’s criminal justice model – to correct larger social disparities and

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<sup>5</sup> As described on the Truth and Reconciliation Commission’s (TRC) website, in 1995 the TRC “was set up by the Government of National Unity to help deal with what happened under apartheid.” The truth commission attempted to achieve full disclosure of the human rights violations committed under apartheid and encourage social transformation and healing through government sponsored public amnesty and victim hearings.

define justice beyond retribution or punishment in order to repair harm to offender, victim, and the community. We can hear this echo when the Commission explains that “We believe...that there is another kind of justice – a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships – with healing, harmony and reconciliation” (qtd. in van der Merwe 26).

But while restorative justice examples like the Truth and Reconciliation Commission have “quickly become the model for other countries” and restorative justice practices have moved from prisons to schools and workplaces, even its advocates advise caution about adopting the model uncritically. A recent study, *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (2009), underscores the necessity of considering the “multifaceted” and “intertwined” nature of justice, reconciliation, truth, and social transformation (44) and criminologist David Cornwell warns that “attempts to re-define the nature of crime and the purposes of punishment need to be approached with caution” (35).

If it is the manifestation of Beccaria’s and Bentham’s models that contemporary justice advocates seek to alter or critique through widespread adoption of Restorative Justice paradigms, then perhaps a good place to begin investigating not only the criticisms of the punitive models they advocated, but the potential attributes and implications of more restorative models they overlooked, may be with individuals who disagreed with Beccaria and Bentham during their own historical era. One such individual whose voice was perhaps drowned out of the debate for a variety of reasons – some of which were likely personal scandal and perceived radicalism – is William

Godwin.<sup>6</sup>

Philip Jenkins describes Godwin's overlooked contributions to the criminal justice debates. He remarks that,

It is important to emphasise the prophetic value of [Godwin's] criticism. The trends Godwin describes...continued to be guiding principles of western prison systems until the middle of the next century, when they began to be subjected to criticism of precisely the type Godwin had put forward in the 1790s. Godwin had already identified their fatal flaws and presented an impressive critique of Classical assumptions...Had it not been for Beccaria's success, this might have been achieved decades earlier. (125)

While Godwin's contributions to criminal justice and the "very sophisticated radical theor[y]" that Jenkins refers to have been considered more recently, particularly in literary studies, Godwin's anticipation of restorative justice practices through the democratic, participatory model he puts forth in *Caleb Williams* has not been widely or closely scrutinized.<sup>7</sup>

Looked at through a lens of criminal justice paradigms, we see that Godwin's political tract *An Enquiry Concerning Political Justice and its Influence on Modern Morals and Manners* (1793) laid out a theory for achieving justice rooted in utilitarian principles, which were committed to more equitable and just processes of law. Godwin's theory granted individuals involved with a crime the opportunity for open disclosure and

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<sup>6</sup> Whereas Bentham's and Beccaria's views toward deterrence and punitive control implied stricter containment of citizens, Godwin's views were radical because they granted citizens greater responsibility and authority. One possible reason Godwin's ideas were dismissed, then, was because they failed to serve the interest of the dominant class.

<sup>7</sup> For example, Kenneth S. Graham's *The Politics of Narrative* (1990) discusses the role of trials in the novel as "an emblem of the open society he advocated, an environment where truth may emerge despite confusion and prejudice" (33). Hal Gladfelder's *Criminality and Narrative in Eighteenth-Century England: Beyond the Law* (2001) places *Caleb Williams* among texts working to subvert an ideology of punishment, arguing that it "ultimately permi[ts] a radical critique of the law itself as an instrument for the enforcement of oppressive gender and class relations" (xii). Jonathan Grossman's *The Art of Alibi: English Law Courts and the Novel* (2002) considers how *Caleb Williams*' form and subject matter shifted along with legal changes during the nineteenth century, particularly in terms of a structured, suspenseful plot and its connections to the genre of criminal biography. Nancy E. Johnson's *The English Jacobin Novel on Rights, Property, and Law* (2004) devotes a section to discussing agency, status, and the right of property as means to granting legal autonomy in the novel.

participation in their justice procedure, held offenders accountable to the community – rather than the state or the monarchy – and aspired towards reconciliation through conversation, flexibility, and consideration of harm caused rather than blanket punishment regardless of the crime committed. Moreover, in his novel, *Caleb Williams* (1794), Godwin imagines scenarios for testing out and applying these theoretical principles anticipatory of restorative justice, exposing their complications, and fictionalizing them in a form that could reach a wider audience.<sup>8</sup>

In *Caleb Williams*, Godwin tells the story from the first person perspective of Caleb, the son of peasants and the servant/secretary of Falkland, a wealthy squire who inherited a massive country estate. Early in the novel, Caleb discovers that Falkland not only murdered another squire – the tyrannical Barnabas Tyrell – but also allowed two innocent men – a tenant farmer named Hawkins and his son – to be charged, tried, and hung for the crime. When Caleb discovers Falkland’s secret, Falkland reacts by framing Caleb for the felony of burglary. The action of the novel unfolds around this false accusation, with Caleb being relentlessly pursued and persecuted by both Falkland and the justice system. Throughout this pursuit, Godwin represents and critiques different possibilities for achieving justice – from the premodern duel to the prison system and formal legal process. The novel concludes with a final trial scene in which Caleb publicly accuses Falkland of murdering Tyrell, contributing to the “miserable end of the Hawkinses,” and manufacturing false allegations against him (334). Falkland confesses to the charges and Caleb feels relief that, despite his suffering, “the world may at least not hear and repeat a half-told and mangled tale” (337).

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<sup>8</sup> The price of the novel was considerably less expensive than his philosophical treatise and therefore more widely affordable. Further, as fiction, the narrative allowed readers a context in which to envision the ideas.

Uniquely situated in the midst of cultural debates about legal and penal reform, as the western world moved from a culture of public torture to a culture of surveillance, Godwin intervenes in the debate by representing and critiquing this range of justice models – chivalric, anarchic, punitive, and restorative.<sup>9</sup> He considers their legal theory and application through the level of truth each process achieves and the level of harm each outcome restores to victim, offender, and community. Within each of the different approaches to justice, he draws our attention to the inequities and traumas suffered by individuals disenfranchised from the system because of their social status; he advocates for a model that will correct such systemic imbalances. Godwin suggests reform through a criminal justice model anticipating contemporary restorative practices “that aims at offender accountability, full participation of both the victims and offenders and making good or putting right what is wrong” (van der Merwe 27). By representing the truth and partial reconciliation achieved in Caleb and Falkland’s final trial, he offers a possibility for a more restorative model than the retributive or punitive paradigms that have dominated since his novel’s publication.

### I. REPRESENTATIONS OF JUSTICE

In order to underscore the benefits of a restorative model, Godwin first considers the limits of other potential justice processes for individual and community. He begins with a consideration of dueling, the lingering chivalric practice that was a remnant of pre-modern justice. Anthony Simpson discusses the practice Godwin depicts in “Dandelions on the Field of Honor: Dueling, the Middle Classes, and the Law in Nineteenth-Century England,” his article about the reemergence of dueling during the late eighteenth and

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<sup>9</sup> Michel Foucault famously examines this evolution from public spectacle to private punishment and surveillance in *Discipline and Punish: The Birth of the Prison* (1979).

early nineteenth centuries. Simpson helps clarify Godwin's critique because he explains how duels were practiced by members of the upper- (and burgeoning) middle-class as a means to legitimate their difference from men of a lower rank; Simpson notes that "aggressive and public displays of these exclusive institutions were...demonstrations of continued privilege and power" (104). Godwin depicts the exclusivity of this pre-modern practice in his novel by limiting the characters involved in his dueling episodes to "men of rank" (13). Rather than a system that could be widely applied to achieve equitable justice, Godwin represents only his landed and aristocratic characters engaging in the ritual.

Beyond its exclusivity, Godwin suggests that the dueling process fails to achieve justice because it is irrational: it is both too rigid and too unregulated. A challenge can not be refused regardless of the truth of the events or the severity or triviality of the conflict. For example, when Malvesi challenges Falkland to a duel because he mistakenly assumes that Falkland has romantic intentions towards Lucretia, Godwin shows that even if a conflict is based on a misunderstanding, the duel process is more focused on preserving honor than arriving at truth. Godwin also implies that even when all parties might be satisfied through a peaceful resolution, the challenge of a duel can forfeit such a possibility because men are "honour-bound to accept it, not matter how trivial the circumstances" (Simpson 113). For example, Malvesi and Lucretia both want to be together whereas Falkland entertains no long term interest in Lucretia, but this outcome is almost ruined when Malvesi challenges Falkland to a duel. Falkland tells Malvesi that "the laws of honour are in the utmost degree rigid; and there was reason to fear that, however anxious I were to be your friend, I might be obliged to be your

murderer” (18). When Falkland articulates this nonsensical obligation to duel’s law of honour, Godwin highlights that regardless of how trivial, complicated, or uncertain the circumstances, the process leaves little room for moderation or dialogue.

Further, Godwin suggests the cultural pervasiveness of dueling as means to resolve conflict and the inevitable violence inherent in its outcome; although Malvesi and Falkland manage to resolve their dispute, Tyrrel and Falkland’s results in fatality. Despite Falkland’s attempts to reason with Tyrrel repeatedly, and despite the community’s attempts to intervene and outcast Tyrrel through public censure, both men fall back on this extra-legal means of justice: Tyrrel comes back to the public assembly to fight Falkland, and Falkland, too mired in cultural beliefs that promote public demonstrations of honor, stabs and kills Tyrrel after he leaves the assembly house, forsaking collective justice for individual, fatal revenge (141). Simpson describes the cultural values undergirding Godwin’s representation: “Duels were simply ‘fought,’ ... Their object was not to encourage men to humiliate or punish their enemies. It was to permit a man who felt slighted an opportunity to demonstrate to the public that he possessed ‘the total absence of fear requisite to a gentleman’” (114). In Tyrrel’s provocative return to the assembly after the public’s condemnation, Godwin implies that if any change in an approach to justice were to succeed, it would require some codification or limitations so that gentlemen with status, like Tyrrel, would not be able to ignore and overpower community consensus. Further, it would require processes the community would be committed to protecting, so that individuals, like Falkland, would not fall back on culturally promoted, self-centered correctives.

If Godwin shows that the chivalric process fails to achieve truth or justice because it is limited to men of rank, anti-rational, without a just measure of punishment, arbitrary in its application, and inevitably violent in its outcomes, he also attacks the utility of such a system for both individual and community: Mr. Collin's speech against "the modern duellist," implies the harm dueling poses and the selfishness motivating the practice: "Duelling is the vilest of all egotism, treating the public, who has a claim to all my powers and exertions, as if it were nothing, and myself...as if [I] were entitled to my exclusive attention...when I refuse any danger or suffering by which the general good may be promoted, then brand me for a coward" (102). Godwin's representation of dueling reveals its limitations in achieving justice for both individual and community.

Just as Godwin points to problems with this pre-modern, extra-legal justice method, he also points to problems with an unrealized anarchic vision of justice. *Caleb Willaims'* critique of the thieves' informal, unwritten code shares similar elements with the novel's critique of dueling – with no positive law or formal justice system there are no constraints or agreed upon methods to resolve offenses, resulting in an uneven and inequitable system of justice. Godwin's episode with the thieves implies that in such an unchecked society, even individuals with good intentions may become a menace; Caleb explains of the thieves that:

The persons who composed this society had each of them cast off all control from established principle; their trade was terror, and their constant object to elude the vigilance of the community...Accustomed to exercise harshness towards the subject of their depredations, they did not always confine their brutality within that scope. They were habituated to consider wounds and bludgeons and stabbing as the obvious mode of surmounting every difficulty. (227)

In Caleb's characterization of the thieves, Godwin shows how insufficient limits can lead to violence and to a less destructive, perhaps equally harmful outcome: energy wasted or energy spent on taking from the community rather than giving back. Caleb says of the thieves misapplied energy, ingenuity, and fortitude: "I could not help recollecting how admirably beneficial such qualities might be made in the great theatre of human affairs; while in their present direction they were thrown away upon purposes diametrically at war with the first interests of human society. Nor were their proceedings less injurious to their own interest than incompatible with the general welfare" (235). In the thieves' lawless and unconstrained behavior, Godwin again underscores the individual and collective loss that is the consequence of an ineffective justice system; without restraint the thieves hurt themselves as well as the community. He implies, however, that the thieves' untapped resources could be harnessed, given a reform (227). Godwin's critique of dueling and the lawless behavior of the thieves, therefore, reveal that despite assumptions about his desire for a society without government regulations, his vision of criminal justice was not to be found in nostalgic revisions of pre-modern justice or unrealized projections of future anarchism.<sup>10</sup>

Godwin's critique of chivalric and anarchic justice systems implies a commitment to positive law, the need for an agreed upon process for adjudicating it, and alternative outcomes to resolve criminal conflict; however, his critique of modern criminal justice processes and outcomes suggests that his desire for an alternative was not to be found in

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<sup>10</sup> We see this assumption reflected in contemporary reviews for *Caleb Williams* like that found July 1794 in the government-funded *British Critic*, whose correspondent calls the novel "A most evil work, anti-Christian and anti-law, which exalts the robber leader" (qtd in Hindle x). Current scholars, such as Kenneth W. Graham, acknowledge this radical characterization of Godwin too, suggesting that Godwin's perceived anarchism may have contributed to dismissing his ideas. Graham says, "While too powerful a novel to be ignored, [*Caleb Willimas*] shared some of the ignominy and neglect suffered by its author, William Godwin, who advocated political and social reforms too openly at a time of widespread alarm at the power and success of the French Revolution" (1).

the modernizing punitive system either. Godwin first critiques the modern system by representing the way that law can be manipulated, distorted, and defined to serve the interests of those with status or power. Cornwall echoes this position when he describes that “Crime is...a matter of social as well as of legal definition...Many would insist, and with some justification, that most definitions of crime are, to some extent or another, *political* in nature, made by powerful groups with an interest in preserving the forms of social order to which they subscribe” (20, emphasis his). *Caleb Willaims* suggests three consequences to this sort of control within an inequitable retributive system: (1) certain victims are ignored or overlooked because the nature of their crime has not yet been legitimated or established as illegal; (2) certain offenses that arise from inequitable distribution of social benefits are either defined as illegal or charged more severely; and (3) certain crimes that are illegal are not prosecuted because they are committed by people in power.

Godwin underscores the first of these effects – not legitimating certain crimes – in the episode involving Emily Melville. As a woman with neither fortune nor family, Emily is dependent on her cousin Tyrrel’s charity and also vulnerable to his abuses. When Tyrrel makes Emily prisoner in his house because she refuses to marry the man he selects for her, Godwin shows how the justice system allows certain crimes to occur undetected, especially crimes which those in power choose to frame as “the concerns of any man’s private family” (98). Godwin underscores the conceivable brutality of such crimes when Tyrell essentially gives the suitor permission to rape Emily. Grimes tells her: “Your consent was so hard to gain that squire thought it was surest asking in the dark” (67). Although Grimes stops short of acting on Tyrell’s directive, Godwin represents a justice

system that offers very little detection of, or prevention from, harms that might be committed against women with a status such as Emily's.

Godwin's depiction of the episode between Emily and Tyrell also reveals that in a system of private prosecution, which grants so little status to certain victims or defines certain offenses as "private," serious harms that are committed or attempted – such as rape – may go unreported; Beattie explains that, "Only rarely did a servant or apprentice thrashed by their masters...[or] a wife beaten by her husband...complain to a magistrate and institute a prosecution" (124). Beattie cites the expense, the public embarrassment, and the difficulty in getting a conviction as the reason why so few violent crimes, such as rape, were even reported.<sup>11</sup> As I will argue in my next chapter, Mary Wollstonecraft echoes and extends Godwin's concern with this limitation of justice in her novel *Maria: Or the Wrongs of Woman* (1798). She reconsiders Emily's plight in her character Jemima, a rape survivor, representing how Jemima is overlooked by the justice system because of her gender, class, and the nature of the offense perpetrated against her.

If Godwin focuses our attention on disenfranchised victims, however, he also suggests that certain interpretations of what is considered criminal affect those accused of a crime as well; he shows how offenses arising from inequitable distribution of social benefits are either defined as illegal or charged more severely because the accused becomes an inconvenience or subversive to those in power. In *An Enquiry Concerning Political Justice*, Godwin describes how "robbery and other offences, which the wealthier part of the community have not temptation to commit, are treated as capital crimes" (I.iii.94). We see selective definition of crime in *Caleb Williams* in the way Tyrell

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<sup>11</sup> Beattie states that "over the period 1660 to 1800 a [rape] case came before the Surrey assizes on average once every year and half and the Sussex courts only once every four years" (126).

charges Emily with debt when she defies him. Even though she descends from the same lineage as he does and, as Caleb explains, “In equity perhaps she was entitled to that portion of fortune...which had gone to swell the property of the male representative,” Tyrrel’s action is justified under the law (40). Godwin represents how Tyrrel has the financial resources, legal access, and social status to charge her with debt, although her only offense is hurting his pride. Moreover, when Emily dies in prison for this debt, Godwin implies that the consequences of abusing power within an inequitable, punitive system can be great.

Godwin also suggests this subjective interpretation of crime when Hawkins’ son is charged severely for trying to protect his father’s property. When the younger Hawkins illegally cuts down the obstruction Tyrrel intentionally puts up, Godwin underscores how this relatively benign offense, committed in order to secure his family’s livelihood, could be charged criminally and severely under the Black Act. E.P. Thompson explains that the Black Act of 1723 was “the first to introduce the death penalty” and “Both in its severity and in the loose and wholesale manner of its drafting...It provided a versatile armoury of death apt to the repression of many form of social disturbance” (qtd in Hindle 376).<sup>12</sup> In both Emily and Hawkins’ “offenses,” and even in the way Falkland manufactures Caleb’s crime of theft upon which the action of the entire novel depends, Godwin underscores the way the law could be defined and interpreted by those in power to criminalize social disturbances by disenfranchised individuals; in a retributive system rife with inequities – to fatal consequences.<sup>13</sup>

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<sup>12</sup> See Nancy E. Johnson’s *The English Jacobin Novel on Rights, Property and the Law*, 112-114, for a more detailed analysis of Godwin’s critique of the Black Act.

<sup>13</sup> We know that Godwin’s concern for such acts of imaginative legal interpretation by those in power was also relevant in his own life. Although it was written six months after *Caleb Williams*, his non-fiction tract

Aside from the defining crime so that certain abuses against disenfranchised victims remain unprotected or ignored, as well as interpreting the law so that disenfranchised offenders may be more severely charged, Godwin also suggests that the power to delineate crime extends to decriminalizing offenses committed by those in power. Godwin points out that certain crimes that *are* illegal are not prosecuted or charged because they are committed by men of rank. Jenkins supports this analysis, noting that in *An Enquiry Concerning Political Justice* Godwin also acknowledged “the tendency of laws not to punish socially harmful acts by the rich” (123).

We see this decriminalization of the powerful in *Caleb Williams* when Tyrrel intentionally destroys Hawkins’ crops and quite likely poisons his livestock (76). Like Emily, Hawkins is a victim of a criminal offense committed by someone in power, but whereas Emily never pursues prosecution because of her status as Tyrrel’s “possession,” Hawkins reluctantly appeals to the law, believing that Tyrrel’s offense against him is so blatant as to merit protection – even if he is poor. The narrator describes,

Hawkins had hitherto carefully avoided, notwithstanding the injuries he had suffered, the attempting to right himself by legal process; being of the opinion that law was better adapted for a weapon of tyranny in the hands of the rich than for a shield to protect the humbler part of the community against their usurpation. In this last instance however he conceived that the offence was so atrocious as to make it impossible that any rank could protect the culprit against the severity of justice. (76)

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*Cursory Strictures to the Lord Chief Justice Eyre to the Grand Jury* (1794) addresses the way the court was “imagining” treasonous acts in behaviors by members of the London Corresponding Society. Godwin condemned the state’s interpretation as a manipulation, for using the law as “a mere trap to delude us to our ruin, creating a fancied security, an apparent clearness and definition, the better to cover the concealed pitfalls with we on every side are surrounded”(13) – another example of people in power defining crime to serve their own interests. The notion of imaginative treason during the treason trials has been discussed critically in John Barrell’s *Imagining the King’s Death: Figurative Treason, Fantasies of Regicide* (2000). It has been discussed more specific to Godwin in Miriam Wallace’s “Constructing Treason, Narrating Truth: The 1794 Treason Trial of Thomas Holcroft and the Fate of English Jacobinism” (2007) and Nancy E. Johnson’s “Fashioning the Legal Subject: Narratives from the London Treason Trials of 1794.”(2009).

Hawkins' belief is quickly extinguished, however, as Tyrrel employs a lawyer to slow the legal process down by "affidavits, motions, pleas, demurrers, flaws, and appeals" (76). Tyrrel distorts what is criminal by making the pursuit of justice so time consuming, arduous, and expensive (even without a lawyer the time and travel needed to appear "from term to term, and from court to court" would cause considerable expense) that his offense is silenced, ignored, and overlooked. While these obstacles are more overt than the lack of protection and prevention we see in Emily's case, Godwin's message regarding the perversion of justice is the same: "Wealth and despotism easily know how to engage those laws as the coadjutors of their oppression, which were perhaps at first intended...for the safeguards of the poor!" (75). Godwin represents in these examples that crime was defined and applied – that is, acknowledged or ignored, charged or acquitted, heightened or reduced – based more on the status of the individuals involved than fidelity to any stable legal definition. Tilottama Rajan describes that "To cast political theory in narrative or dramatic form is to disclose the fictions of the political world" (167). Godwin's representation reveals and undercuts the fiction of a just criminal system or a stable definition of crime; instead, by means of Emily, the Hawkins, and Tyrrel he dramatizes how inequities within the criminal justice system shape the way in which crime is defined and practiced. He suggests the far reaching implications to disenfranchised individuals when these definitions are attached to punitive outcomes.

If Godwin points out these prejudicial interpretations and definitions of crime, he also represents the people authorizing and maintaining the retributive criminal process – officers of justice, lawyers, and Justices of the Peace (JPs) – as biased and inconsistent. First, Godwin depicts how prison power dynamics create potentially abusive situations in

which “officers of the peace” exert arbitrary control over prisoners. This arbitrary control results in aggressive and inhumane treatment that extends well beyond protecting the community or even keeping order in the prison. For example, after guards painfully bind his injured leg in fetters, Caleb tells them: “You are to take care we do not escape; but it is no part your office to call us names and abuse us” (204). As this situation reveals, the disproportionate balance of power within the punitive system puts prisoners in an extremely vulnerable position, without recourse to protection. Caleb asks, “To whom shall the unfortunate felon appeal? To what purpose complain, when his complaints are sure to be received with incredulity?” (187). Godwin implies that the only means for prisoners to receive basic services, in such imbalanced conditions, is by bribery, such as when Caleb gives his guard a shilling in order to receive medical services (205). Michael Ignateiff supports Godwin’s critique: “Authority in prison...varied according to the sobriety, dutifulness, and resolve of its enforcers. Unbounded by formal rule, it was by definition arbitrary, personal, and capricious” (36).

Second, Godwin underscores that disenfranchised individuals not only suffered without recourse in prison, they also increasingly faced an imbalance of justice with regard to legal advocacy; lawyers prevented justice by slowing down the process and making it expensive for the poor to pursue prosecution, as with Hawkins. They brought harsher charges against the accused, as we see with Hawkins’ son. They also made equal protection for the accused difficult, as Caleb articulates, “Where shall the poor wretch reduced to the last despair, and to whom acquittal perhaps comes just in time to save him from perishing, – where shall this man find leisure and much less money, to see counsel and officers, and purchase the dear-bought remedy of the law?” (188). J.M. Beattie and

John Langbein have traced the development of the adversarial system in England, charting how many of the inconsistencies and imbalances Godwin highlights were being addressed during the late eighteenth and early nineteenth century through attempts to codify evidence laws and allow lawyers into English criminal courts. Langbein theorizes that the move from the “accused speaks” trial to an adversarial format led to the (1) “combat effect,” in which “truth-impairing incentives” motivate “each adversary to win the courtroom struggle,” and the (2) “wealth effect,” in which an “enormous advantage” is bestowed “upon persons who can afford to hire skilled trial counsel” (1-2). Godwin’s representation of “things as they are,” however, suggests that both of these defects were already affecting individuals disenfranchised from the legal system prior to the complete transition to an adversarial format. Further, as I will discuss in my final section, Godwin implies that direct participation by the victim and the accused is important to the justice process he imagines. Therefore, although Godwin may have appreciated legal reform of any sort, the model he represents in his novel suggests that reducing participation by introducing further legal intervention would not have been the sort of reform he would have endorsed.

Third, Godwin also portrays how the arbiters of justice, appointed primarily based on their status in the community rather than any special credential, could lead to a miscarriage of justice. Langbein supports this notion, explaining that “The JPs were mostly local gentlemen active in civic affairs. They were commonly drawn from the higher social orders...The incentive to serve came from the JPs’ interest in keeping local order and in reinforcing their stature in the community through exercise of magisterial authority” (46). Godwin shows the problem with such arbitrary requisites not only as it

leads to prejudicial judgments, but also as it leads to a very uneven application of justice since JPs might all approach their post very differently. For example, Godwin suggests that different approaches might translate to different prerequisites for investigating allegations against an accused – as is the case with the magistrate who tells Caleb that an accusation against Falkland will not even be considered because of Caleb’s lower social rank (287). Godwin implies that in other instances uneven application of justice might result in the same accused being acquitted, unnecessarily imprisoned, or even convicted to death. For example, in the case of the fatal fight between the peasants, Falkland, acting as magistrate without rhyme or reason beyond his own personal experiences, dismisses the case. Caleb tells us, however, that this same case is committed to trial when persistently prosecuted by the victim’s brother, who finds “a magistrate, more scrupulous or more despotic” (135). Although the peasant is finally acquitted, this difference of opinion by the magistrate results in the peasants’ long imprisonment and could have just as easily resulted in a guilty verdict. Godwin’s implication is that if one has the time, effort, and means to pursue prosecution, a JP who agrees with a certain version of truth or justice may eventually be found.

Godwin also implies that even when JPs attempt impartiality or try to stick to a strict code of conduct, as with Forester presiding over Caleb’s robbery trial, too often justice is determined by a magistrate with some connection to the more powerful party or who has a vested interest in deciding the case a certain, predetermined way. For example, when Caleb insinuates that Forester may not be the most neutral of magistrates to determine his case since he is a relative of Falkland’s, Forester admonishes him and claims he has remained unbiased (175). As Mr Raymond later summarizes: “[Falkland’s]

relation, who as justice of the peace made out the mittimus, and who had the folly to think he could be impartial, gave it on his side with one voice” (232). In each case of impartial, inconsistent magistrates, Godwin suggests that within an inequitable, retributive system, outcomes are determined by those too narrowly invested in individual self-interest or collusion with rank.

While Godwin points out the shortcomings of criminal justice administrators, he also points out the limits of the processes in place to achieve justice, showing how judicial procedures maintain social abuses through inequities and inconsistencies. He begins this critique by depicting multiple inconsistencies regarding pretrial detention. In some cases, the accused is apprehended and held as he or she awaits trial, as with Emily (88) and the younger Hawkins (77). In other cases, the accused is simply asked to appear for trial, as with Falkland (103). In still other cases, the accused is apprehended and detained, but then simply let go without explanation, as happens to Caleb (289).

Godwin suggests in the disparity of these cases that the pretrial process has less to do with the harm inflicted by the alleged offense, or the evidence and degree of probable cause available to detain an individual, than with the status of the accused. In the case of Falkland, he is not apprehended even though he has a known history of conflict with the murder victim and there are several witnesses to their dispute the night of the crime. When Caleb is held for the charge of mail theft, his impoverished appearance and Irish accent are enough to detain him, even though none of his other physical features match the description on the deposition (251) and he earlier tells us that “three fourths of those who [are detained awaiting trial]...are persons whom, even with all the superciliousness and precipitation of our courts of justice, no evidence can be found to convict” (189). In

this disparity of pretrial detention procedures, Godwin underscores how individuals with a lower rank are held with a lesser degree of evidence and suffer from more severe retribution, even before conviction.

Legal history supports the inconstant pretrial procedures Godwin depicts. John Beattie describes the growing authority of magistrates to independently determine whether or not to charge a case during the late eighteenth century, as well as the manner in which their discretion was largely influenced by the “respectability” of the parties involved: “a magistrate could not dismiss a charge that had been sworn to on oath by a respectable prosecutor. But in other circumstances magistrates were thought entitled by the eighteenth century to discharge a man or woman brought before them for examination” (275). He underscores the significance of this discretion since the allegation of an offense by a community stakeholder would ensure certain custody: “commitment to jail to await trial was the most certain prospect of those charged with felonies if the magistrate sent the case to court” (Beattie 281).

If procedures regarding whether or not the accused is held, and what evidence is necessary to hold him, shift, Godwin also suggests inconsistency regarding the amount of time the accused is detained awaiting trial. In some cases, the accused is allowed to appear for trial at the next assizes (young Hawkins), in other cases, and for no apparent reason, the accused is “suffered to stand over six months longer” until the next assize (Caleb). John Langbein supports Godwin’s representation; he explains “Because the provincial trial courts (assizes) sat only twice a year, in the spring and late summer, it was possible for an accused who was committed to pretrial detention just after the summer assizes to spend eight and a half months in jail awaiting the next sitting of the court” (49).

Godwin suggests that what is perhaps even more frustrating than unpredictable procedure is the lack of accountability for such inexplicable treatment. We can see this lack of accountability when Caleb explains that “I could never discover with certainty whether this delay were owing to any interference on the part of the prosecutor, or whether it fell out in the regular administration of justice, which is too solemn and dignified to accommodate itself to the rights or benefit of an insignificant individual” (196). Related to this lack of accountability toward the accused is the state’s practice of withholding its reason for detention: regarding his son’s detention, Hawkins “was even uncertain as to the issue of his imprisonment” (78) and Caleb tells us that “I was totally ignorant of the charge to be advanced against me” (169). Godwin implies that wrongly detaining an alleged offender was usually of little consequence since “they felt little apprehension of a suit for false imprisonment from a poor man” (252). He reminds readers of the inhumane conditions and inconsistent practice that results from a punitive system administered and regulated by too few people with too much power.

Godwin’s representation of detainment without accountability may be critical of lingering pretrial practices, which “gave the prisoner few rights...he was not to be told precisely what the evidence was against him,” a practice which Beattie maintains “remained very much intact...into the eighteenth century” (271-2).<sup>14</sup> It certainly anticipates the June 1794 suspension of *habeas corpus* that Godwin would witness applied to political prisoners in which, “Pitt and his ministers found it more convenient to

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<sup>14</sup> Beattie identifies this as the Marion pretrial procedure, noting that “the magistrate was more of a policeman than a judge...a view of the magistrate’s examination as a search not for the truth of the charges laid and denied but for the strongest evidence that proved the prisoner’s guilt” (272). He explains that “by the early eighteenth century, however, attitudes toward the accused at this stage of criminal procedure were beginning to change” (273). Godwin’s representation shows the lingering presence of the earlier attitude (little consideration for the rights of the accused), particularly concerning practice toward indigent individuals accused of a crime.

confine political prisoners...than bring them to trial” (Ignatieff 121). In either case, Godwin’s point remains the same: accountability to the accused regarding the reason for his custody could be forfeited, particularly if the offender was indigent or deemed a threat to social order.

Godwin also suggests that rank plays a role in trial procedure regarding evidence and truth. Aside from the disparities created by unevenly allowing legal advocates, as noted earlier, he also suggests the truth finding process favors the wealthy because it depends heavily on subjective proof, and, by paying for prosecution witnesses, it encourages perjury. First, Godwin underscores an imbalance in the contrast he represents between Falkland and the Hawkins, both on trial for the murder of Tyrrel. Falkland’s acquittal is based entirely on his public reputation and his assertion of his own innocence. He calls no witnesses and neither disputes nor enters any evidence. Evidence that hints at his guilt, for example his history of feuds with the murder victim or the witnesses who saw the conflict the night of murder, is never addressed. The Hawkins, however, are wrongly convicted based on the certainty of “accumulated evidence” including clothes, a knife handle, and the alleged sighting of the men on the night of the murder (108). Evidence that suggests their innocence is never addressed (121).<sup>15</sup>

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<sup>15</sup> Alexander Welsh’s important study *Strong Representations* (1992) argues that literary texts during this era, such as Fielding’s *Tom Jones*, favored circumstantial evidence as being more accurate and certain (“the evidence that holds up in *Tom Jones* is nearly all indirect and the evidence that misleads is mostly direct” 57). Jan Melissa Schramm’s *Testimony and Advocacy in Victorian Law, Literature, and Theology* (2000) also discusses the manifestation of contemporary skepticism toward direct testimony in fiction. In contrast to their arguments, however, Godwin’s fiction seems to represent how both direct *and* indirect testimony are subject to manipulation given the status of those on trial. Mary Shelley returns to and extends Godwin’s discussion of circumstantial evidence and truth in trial in *Frankenstein* (1818). Despite recognizing the obstacles to achieving truth in trial, both seem concerned with imagining a justice process in their fiction that might include direct participation by victim and accused.

Second, Godwin suggests that witnesses and direct testimony can also be wrong, such as when Robert, Falkland's servant, testifies to seeing Caleb by the scene of the crime "standing there with every mark of perturbation and fright," which may have been true, but not because he was guilty (173). Direct testimony can be fabricated within a system that pays for the conviction of wanted offenders, such as with Grimes or the officers of justice holding Caleb for mail theft, even though they know he's not the suspect (252). Langbein describes the problems that "thief-takers" like these posed for determining the truth: "the government launched a sustained effort to increase the levels of criminal prosecutions by offering monetary rewards for the successful prosecution of offenders...The reward statutes called forth a mercenary proto-police, the thieftakers...The reward system turned out to be fraught with incentives for false witnessing"(109). Grimes represents just such a false witness. Confirming Godwin's depiction of the way this system unfairly penalized accused of the lower class, Langbein notes that "many of the victims of these false prosecutions were commonly too poor to afford counsel" (157).

## **II. PROCEDURAL AND OUTCOME-BASED HARMS RESULTING FROM FAILURES OF RETRIBUTIVE JUSTICE**

In his representation of the criminal justice system, Godwin shows how state administered processes not only fail to achieve justice or repair harm, but may actually contribute to augmenting harm for both the individual and community. Godwin suggests that an inequitable criminal justice process fails victims by not producing the truth; therefore, it neglects certain crimes and falls short of discovering or holding true perpetrators accountable. Further, the justice system fails victims by ignoring the significance of the harms committed against them. This failure leads to further harm such

as increased disenfranchisement, as with Hawkins (79). By silencing and overlooking victims, Godwin depicts an increase in frustration and anger; victims turn away from forbearance or benevolence and towards abhorrence, as Caleb does initially (284). Godwin even hints that the continued oppression of disenfranchised victims may eventually lead to revolution or violence against those in power (71). As I will show in later chapters, concern for marginalized victims silenced by an inequitable justice system becomes a significant preoccupation of other texts within the Godwin-Wollstonecraft-Shelley family fictions: as mentioned earlier, Wollstonecraft's *Maria* underscores the significance of recognizing disenfranchised victims by means of her character Jemima. Percy Shelley's, *The Cenci* (1819), goes even further in suggesting the consequences that can result from denying victims' recognition and the space to testify – his character Beatrice kills her offender.

In administering the law unequally and creating trial procedures that fail to disclose the truth, the process also harms falsely accused individuals by not protecting them and actively suppressing them. Godwin suggests that in an aggressive retributive system bent on closure, legal processes can actually be abusive, as is the case with Caleb or the men who are acquitted after suffering in pretrial detention. In some cases, the process harms falsely accused individuals by contributing indirectly to their death, as with Emily and Brightwel. This concern also becomes a preoccupation within Mary Shelley's *Frankenstein*. Shelley revisits harms against falsely accused individuals marginalized by the system in Justine Mortwitz's trial. Like the Hawkins', Justine's false accusation ends in her wrongful conviction and execution.

Godwin also demonstrates how failures of the criminal justice process are harmful to individuals who perpetrate crimes as well – even if they are not found guilty. Godwin suggests that for privileged offenders and skilled criminals who escape criminal conviction, averting accountability leads to suffering and alienation, rather than happiness or relief. As a free man guilty of murder but not held responsible for the crime, Falkland changes from a well-adjusted, involved community member to a paranoid, spiteful recluse. Caleb states about him, “His visage was haggard, emaciated, and fleshless...His eyes were red, quick, wandering, full of suspicion and rage...Life seemed hardly to be the capable inhabitant of so woe-begone and ghost-like a figure” (291). As I will discuss in Chapter Three, in both *Frankenstein* and *Falkner* (1837), Mary Shelley, like Godwin, explores the significance of the harm exasperated when guilty individuals lack a forum to confess their crime.

If victims, falsely accused, and undiscovered offenders suffer within the procedures administered by this criminal justice system, Godwin implies that individuals supporting its legal and penal institutions are compromised too; they lose their virtue and autonomy in order to serve an imbalanced system bent on punishment. Godwin represents how otherwise decent individuals behave aggressively or inhumanely because they are hired to do so within a retributive system. For example, Caleb’s prison keepers abuse their power and the officers of justice forcibly take Emily into custody even though she has committed no wrongs and would be better suited for a hospital than a prison (87). Godwin also suggests that the process corrupts good people by tempting them to sabotage reciprocal relationships, and sacrifice benevolent individuals, for money that can be

gained by prosecution. Godwin exemplifies this corruption when Mr. Spurrel, who at first acts as a friend, turns Caleb in for compensation (283).

Moreover, Godwin shows how such criminal justice procedures harm the overall wellbeing of the community. The miscarriage of justice under Caleb's system allows dangerous individuals who are willing to commit further harm to remain at large, thereby posing a threat to the rest of the society; Falkland attests, "There is no crime so malignant, no scene of blood so horrible, in which the object cannot engage me" (143). The novel implies that the system's focus on prosecution and retribution creates a climate of surveillance that encourages commitment to the community for the sake of greed or vengeance, rather than for the sake of mutual protection or altruism: Caleb describes, "A numerous class of individuals... would be induced to look with a suspicious eye upon every stranger... The prize of one hundred guineas was held out to excite their avarice and sharpen their penetration" (279). Rather than creating conditions for a secure, safe community, Caleb's passage here underscores the way the system instigates doubt, skepticism, and even injustice.

If Godwin represents the way an inequitable state run criminal justice system contributes to further harm, he also critiques the punitive outcomes towards which his critiques lead. He represents how imprisonment – whether during pretrial detention, as a long term solution, or as a means of deterrence from future crime – is ineffective and harmful to individuals.<sup>16</sup> First, pretrial detention prevents potentially innocent people

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<sup>16</sup> Godwin's critique of penal reform was part of a larger cultural debate as criminal justice transitioned from corporeal punishment to incarceration. He was certainly aware of texts coming out of the "Classical" school, influencing this transition – Jeremy Bentham's *The Panopticon* (1791), Cesare Beccaria's *Dei Delitti e pene (Of Crimes and Punishments)* (1764), and John Howard's *The State of Prisons* (1777). Godwin mentions the latter two in his *Enquiry*. However, as this section elaborates, important aspects of his philosophy differ substantially from these reformers.

from being useful members of the community during their detention – as Caleb tells us, three quarters of the prisoners who are detained are acquitted. Second, pretrial detention also ruins falsely accused people, preventing them from being functional in society after custody: it may damage individuals held emotionally and psychologically – such as with the peasant who, after being acquitted, was “turned loose to wander a desolate and perturbed spectre through the world” (206); or it may inadvertently kill individuals in custody – such as Emily and Brightwel who perish because of illness brought on by prison conditions.

If short-term imprisonment harms individuals by isolating them and psychologically damaging them, Godwin suggests that imprisonment as a long term outcome of the justice system also fails. As a more humane form of punishment – a less bloody, less public retribution – incarceration falls short. Caleb describes how the secret, mental torture of imprisonment is just as barbaric as whipping, branding, or hanging: “We talk of instruments of torture; Englishmen take credit to themselves for having banished the use of them from their happy shore! Alas! he that has observed the secrets of prison, well knows that there is more torture in the lingering existence of a criminal, in the silent intolerable minutes he spends, than in the tangible misery of whips and racks” (187). Caleb’s remarks dispel the illusion that the English are a more civilized, progressive nation; instead, they underscore how abuses have just become more cloistered.

Further, rather than achieving reform or rehabilitation, as Godwin’s contemporary John Howard suggested prisons might, incarceration increases a propensity for criminal behavior if anything. While Howard posited that prisons could be rehabilitative or that

solitary confinement could be reformatory, in *An Enquiry Concerning Political Justice* Godwin tells us that “Man is a social animal... To be virtuous, it is requisite that we consider men, and their relation to each other.... Solitude, absolutely considered, may instigate us to serve ourselves, but not to serve our neighbors” (677-8). On this point, Ignateiff notes that for Godwin, “Reformation was a social process, a matter of persuasion and example rather than force” (118). We see this critique of imprisonment repeatedly throughout *Caleb Williams*, particularly through the plight of our narrator: after being imprisoned for over six months, experiencing physical and emotional abuse, and losing all faith in the justice system, Caleb plots an illegal escape rather than face the prospects of a trial he believes will be a “sequel” to the unjust treatment he has already suffered (190).<sup>17</sup> Godwin proposes that retributive outcomes do not serve the truth or leave individuals in a condition to contribute positively to the community.

Since Godwin believed that reformation “was a matter of persuasion and example rather than force,” he also differed from Bentham and Beccaria in their emphasis on punishment as a way to deter or their “‘authoritarian’ attempts to ‘improve’ people,” through imprisonment and surveillance (Ignateiff 118). Godwin suggests that instead of reducing crime, criminal activity simply becomes more covert: Caleb uses disguises to remain a free man, Tyrell hides his abuses of Emily within the privacy of his own home, the thieves move themselves to the outskirts of the community, and savvy criminals like Grimes actually find ways to profit from the punitive system. After two hundred years of experimentation with prisons as a means of deterrence, Cornwall assures modern readers of Godwin’s argument: “If there is any certainty within our understanding of penology, it

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<sup>17</sup> Henry Fielding had famously asserted in his 1751 tract *An Enquiry into the Late Increase of Robbers and Related Writings* that prisons were “seminaries of vice and sewers of nastiness and disease” (qtd. in Ignateiff 52). By the time Godwin writes his *Enquiry* he refers to this as “a proverb” (7.6.676).

is that prisons do *not* reduce crime, and may actually increase it” (76). Godwin’s novel exposes this assertion.

### III. AN ALTERNATIVE SYSTEM: RESTORATIVE JUSTICE

If Godwin critiques the law’s application, trial procedure, and the purposes and administration of Caleb’s punitive system, he also offers readers another, more restorative, criminal justice model in *Caleb Williams*. In crafting Caleb and Falkland’s final trial as well as episodes involving conflict resolution throughout the novel, Godwin imagines a more democratic, participatory process that requires the use of the law to limit offenders, but which largely places responsibility and resolution into the hands of victims, offenders, and community. By representing a process that seeks accountability and reconciliation, rather than judgment and punishment, he suggests a model in which greater truth, healing, and change can be achieved. As we will see, the model that follows – Godwin’s justice model – resonates in the fictions his family produces.

First of all, Godwin suggests the need for some form of positive law as a significant requirement of a fair justice system. As suggested earlier, in the breakdowns of the anarchic and chivalric models he depicts, Godwin implies that criminal justice requires the limits of formal, written law. He shows the consequences of not having an agreed upon system to resolve conflict and suggests the reasons why he feels laws are necessary: to protect individuals, to keep the powerful in check, and to keep the community as safe as possible in order to create conditions conducive to security and happiness. In his ideal model, the original intention of these laws would be reclaimed; as the narrator describes, “laws...were perhaps at first intended...for the safeguards of the

poor” (75). Godwin suggests that agreed upon, if flexible, codes are an important place to start in achieving these protections.

Second, Godwin considers the role of arbiters in a just system. He suggests that in order to safeguard against the loss of individual reason to the demands of the sovereign or collusion with the dominant class, application of the law should be equitable, democratically instituted, and cognizant of circumstances contributing to an offense. Arbiters of justice should have knowledge of the precedents and statutes, but in order to avoid maintaining social disparities, they should be unconnected to the parties involved; Mr. Forester has the right idea when he says “It is a wise principle that requires the judge to come into court unformed of the merits of the cause he is to try,” but Forester falters in overlooking his own interest in the case of Falkland and Caleb (169).

*Caleb Williams* indicates that in order to avoid inequitable interpretations of the law, arbiters should consider the circumstances that contributed to the crime as well as the conditions for disclosing them. Although Mr. Forester believes that “it is right to be severe and inflexible in the treatment of offenders,” too much rigidity prevents him from relying on his own reason when Caleb begs him to question the probability of the charges against him (174); his rigidity blinds him to the inconsistencies of the case against Caleb in his desire for certainty (175). Godwin also underscores that Forester’s rigidity to the system and “things as they are” precludes him from realizing that Caleb is afraid to tell the truth and publicly shame his master within a legal process that does not protect those less powerful.

Godwin implies that an arbiter should be firmly convicted in the pursuit of justice, but should also be able to acknowledge the origin of the conflict and perhaps even shared

responsibility: as Mr. Clark tells Falkland, “Mr. Tyrrel is boisterous, rugged, and unfeeling; you are too passionate, too acutely sensible of injury” (37). Furthermore, a good arbiter should have a goal of repairing as much as reprovving harm; for example, Mr. Clark can “[point] out to men their mistakes with frankness and unreserve...but without uneasiness in the party to whom they were addressed: they felt the instrument that was employed to correct their irregularities, but it never mangled what it was intended to heal” (26). Finally, a good arbiter of justice needs to be unintimidated by status; when Mr. Clark dies, the narrator tells us that his death “removed the person who could most effectively have moderated the animosities of the contending parties, and took away the great operative check upon the excesses of Mr Tyrrel” (39). Godwin suggests a reasoned, sympathetic mediator can do a great deal to prevent harms or at least reduce future conflict; Clark’s death significantly contributes to the situation escalating between Falkland and Tyrrel, resulting in the murder and false accusation.

Third, Godwin downplays the role of lawyers within his ideal system. His representation of Mr. Clark as an effective moderator is probably not only intended to imply the superiority of poets,<sup>18</sup> but also to suggest that considerable power should be granted to community members and non-specialists. This principle implies minimal intervention by lawyers in legal trials or truth processes. Of the episodes in the novel in which truth is most likely revealed – the conflict between Malvesi and Falkland, the early confessional scene between Falkland and Caleb, the trial between the peasant and the victim’s brother, the public assembly at which Tyrrel is sanctioned, and the final trial –

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<sup>18</sup> Schramm identifies the way fiction writers in the late eighteenth and early nineteenth century saw themselves competing with lawyers for “the right to provide an authoritative account of the ‘facts’ of an event” and provide an “exploration of repressed material” (16). Godwin seems to uphold and dramatize this trend in his depiction of Clark; the poet who penetrates the truth and maintains peace much better than agents of the legal system.

no lawyers intervene. Instead victims, offenders, and the community participate in these successful processes. Van Ness and Strong suggest the parallel principle undergirding contemporary restorative justice paradigms when they describe that one of three fundamental propositions of restorative justice is that “Those most directly involved and affected by crime – victims, offenders, and community – should have the opportunity to participate as fully in the response as they wish” (41). As Langbein and Beattie have concluded, and representations within the novel reveal, legal advocates were slowly and informally becoming more typical during Godwin’s lifetime. Despite this shift, Godwin’s novel gestures as the unhelpful, inequitable intervention of lawyers – instead favoring a process that seeks disclosure of truth by directly engaging victim and offender.

Godwin not only suggests that legal minimalism may lead to a more truthful outcome, however. Fourth, he also indicates that participation in the justice process can be helpful for victim, offender, and community on other levels. Participation in the justice process contributes to a sense of self worth by granting an individual recognition; we see how important this recognition is when Caleb demands justification for being denied it. He asks Falkland: “What is it that casts me at such an immense distance below you, as to make every thing that relates to me wholly unworthy of consideration?” (293). For Caleb, to be heard is to be acknowledged, to be alive, to be part of something beyond the self. Without this recognition Caleb describes his isolation and hopelessness: “ ‘I called aloud; but there was none to answer; there was none that regarded.’ To me the whole world was unhearing as the tempest, and as cold as the torpedo. Sympathy, the magnetic virtue, the hidden essence of life, was extinct” (318). Caleb’s plea underscores that acknowledging individuals as fellow creatures by giving them the space to speak and

participate during the process, regardless of their status or role in an offense, is critical to the family's vision of justice.<sup>19</sup>

Godwin also represents how participation can be restorative in recovering from trauma, whether for victim or offender. After Brightwel listens to his story, Caleb tells us "He heard my story...understood, and...loved me" (200). He explains the cathartic nature of telling one's version, describing "one of the motives which induced me to the penning of this narrative was to console myself in my insupportable distress" (129). Participation by the accused can also be restorative because accountability can help clarify the offense and provide closure – as when Falkland tells Malvesi "the original blame was mine...I ought not...to have been so assiduous in my attendance upon this enchanting woman" (17). Participation may help the accused accept responsibility for his transgression as well, as when Falkland finally admits to the murders, telling Caleb "I bless the hand that wounds me" (335). Significantly, Caleb's "wounding" of Falkner is neither disciplinary nor vengeful; rather it is dialogic and seeks responsibility.

Godwin implies that participation by victim and accused is also a far more effective means to achieve reform and deterrence. If punishment is coercive and therefore ineffective, then learning the effects of the harm you have caused is an experience that appeals to both individual reason and emotion. Godwin dramatizes the force of participating during the peasant's trial for murder, when the narrator states that "While the accuser was giving in his evidence, the accused discovered every token of the most poignant sensibility" (133) and when Caleb describes that during his trial, Falkland

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<sup>19</sup> Both Wollstonecraft and Mary Shelley return to the benefits of a participatory justice process in their novels. Wollstonecraft focuses primarily on the benefits of creating space for victim testimony, while Shelley primarily focuses on the benefits of creating space to hear offenders. My subsequent chapters consider the significance of these aspects within their representations of restorative justice.

“saw my sincerity; he was penetrated with my grief and compunction. He rose from his seat...and – to my infinite astonishment – threw himself into my arms” (335). In his

*Enquiry* Godwin articulates this idea as well:

Tell a man what will be the solid and substantial effects of his proceeding, how it will affect his neighbours, and what influence it will have upon his happiness, and you speak to the unalienable feelings of the human mind. But tell him that...it is sufficient that he has promised a certain conduct, or that, if he have not expressly promised it, he has promised it by implication, or that, if he have not promised it, his ancestors a few generations back promised it for him; and you speak of a motive that scarcely finds a sympathetic chord in the human breast, and that few will so much as understand. (3.2.228)

Godwin suggests here, and his examples in *Caleb Williams* demonstrate, that hearing the harm that has been done and seeing its effects on an individual, on a neighbor, is a more active and experiential means to accountability and restoration than forcibly imposing reform on an unreceptive offender; but further, realizing the harm caused to another person is a method that may reach beyond barriers of time or life experience, whereas written codes or abstract expectations may not.<sup>20</sup>

Direct participation by victim and accused may lead to a fuller disclosure of truth as well as move parties closer to recognition of harm caused, but Godwin also suggests the value of community involvement in criminal procedures. Van Ness and Strong again echo Godwin when they describe that a second fundamental to contemporary restorative justice is that “While the government is responsible for preserving a just public order, the community’s role in establishing and maintaining a just peace must be given special significance” (42). Godwin demonstrates that civilian involvement is important on multiple levels.

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<sup>20</sup> Shelley depicts the obstacles to this aspect of the family’s vision of justice in Victor and the community’s failure to acknowledge the monster as a fellow creature or neighbor, as I will discuss in my third chapter.

Civilian involvement allows the public to learn of the abuses occurring in their community. Godwin represents the significance of this exposure in “the accidental spectators” who are present at the peasant’s trial (133) and the public assembly that gathers to hear of Tyrrel’s mistreatment of Emily. He invokes the significance of this exposure in his readers who learn of the wrongs and injustices inflicted on Caleb and his peers. Godwin implies that to hear the experiences of a “solitary individual” is an important part of a society striving for equality because as Caleb describes, “looking on the other side of the picture” helps us find others “when properly understood...worthy of our reverence and love” (122). In *Testimony and Advocacy in Victorian Law, Literature, and Theology*, Jan Melissa Schramm supports the significance of community members hearing testimony of the oppressed. She says, “Reliance on testimony...carries great ethical weight. The narrative of the eye-witness often records the experiences of people expelled from their own communities by those who wield power and privilege” (4). It is in the community’s self-interest to make space for the disenfranchised so that abuses can be exposed and corrected.

Civilian involvement in the justice process also encourages engagement and involvement with the community rather than ignorance about the plight of others or blind obedience to the norms of the sovereign. Godwin suggests that when a community member participates in the justice process and recognizes the realities of others, she is being held accountable too. Hearing may translate to action and social change, as when Caleb notes that “though wealth and hereditary elevation operate as an apology for many delinquencies, there are some which so irresistibly address themselves to the indignation of mankind, that, like death, they level all distinctions” (95). Godwin suggests that

community participation in the justice process encourages this recognition and, when appropriate, indignation and action.

Godwin proposes that community participation is additionally important because just as seeing the effects of harm may produce more of an effect on an individual than coercion, so too might the retributive aspects of social disapproval or disgust from the community. The narrator describes the effect of this sort of non-coercive, and physical force-free retribution on Tyrell: “In the indignation of all around him he found a ghost that haunted him with every change of place, and a remorse that stung his conscience and exterminated his peace... There was scarcely a human being upon whom this sort of retribution could have sat more painfully” (96). Godwin suggests that public censure has a significant result on Tyrrel’s behavior.

Fifth, the value of community involvement underscores another aspect of the model Godwin advocates – setting. The setting of criminal processes should not be too private. Godwin suggests the reasons why too private a process is dangerous when, after Falkland privately confesses to murdering Tyrrel, his treatment of Caleb actually becomes worse because too much privacy simply insulates crime and leads to no accountability. This lack of accountability means that the offender may not experience any relief from guilt or may not feel obliged to change his behavior. Further, a procedure that is too private not only cheats the victim of wider recognition that he has been harmed, but, as we see with Caleb, also fails to provide protection from future harms.

Instead the criminal process should be open, transparent, and (at least) semi-public, as Caleb and Falkland’s last trial is. Caleb tells Falkland “meet me as an open accuser in the face of day” (167) and Falkland tells Tyrrel “the public scene is the only

place where I can have anything to say to you. If you would not hear the universal indignation of mankind, you must not come into the society of men” (98). In these passages, Godwin appropriates the discourse of duels. He taps into their esteemed aspects, such as their public nature and their connection to the law of honor. By shifting their process and outcome of achieving justice to a less bloody resolution, however, he manages to connect this rhetoric to a more restorative, peaceful paradigm.

Godwin also implies that while public, the setting should be unthreatening enough so that both victim and accused can participate without fear of telling the truth. In *Enquiry Concerning Political Justice*, Godwin suggests that some of this fear may be alleviated by altering the expectations of outcomes, and as his most restorative episodes in *Caleb Williams* indicate, truth telling should not automatically be annexed to punishment (315). Van der Merwe describes the adoption of this belief in modern restorative justice practice; he says that

Truth is relevant in both the accountability and retributive approach to justice, but serves a different function in these two approaches. Under retribution, truth is about criminal investigations to find out who is responsible for what exact act in order that they may be prosecuted and to decide appropriate punishment. Under accountability, truth is an understanding of why things happened. It is about understanding the context, the chain of events, the motives involved, and how people could justify to themselves what they did. (42)

Additionally, conditions must be such that community member, listeners, and jurors, need to not be afraid of the ramifications of acknowledging a truth that threatens those in power. As Mr. Collins tells Caleb “The justice of proclaiming your innocence? You know the consequences of that” (320). In Collin’s reluctance to support Caleb, Godwin highlights the manner in which a retributive system dominated by individuals with power

and status can create conditions that are detrimental to justice, and he seeks alternative conditions.

Finally, although in Caleb and Falkland's final trial we learn that the ideal outcome of the justice process should be the disclosure of truth, accountability, and reconciliation, Godwin also hints that some offenders may need to be detained for the protection of the community. This detention, however, should not be with the intention to reform or deter. We might hate the crime, but we should not hate the criminal. Describing the thieves, Caleb explains, "My habits of thinking were such that gave me an uncontrollable repugnance to the vocation of my hosts. I did not indeed feel that aversion and abhorrence to the men which are commonly entertained. I saw and respected their good qualities and virtues...But, though I did not cease to love them as individuals, my eyes were perfectly open to their mistakes" (235). Godwin implies that deterrence may be necessary in certain extreme cases then, in order to prevent further harm.

#### **IV. JUSTICE?**

If restorative justice is a means to healing the harms inflicted, then I argue that Godwin imagines such a model in the last scene of the novel – Falkland and Caleb's trial. But why have so many readers felt dissatisfied with the level of justice achieved? Or felt frustrated by its resolution? Some readers feel the final trial is a victory for truth, while others suggest that Caleb is corrupted because he appropriates "the language of false honour and servility demonstrated by Falkland" in order to achieve acquittal (Schramm 91). Other readers express frustration and indignation that Falkland ends up suffering for his crimes very little, while Caleb ends up feeling mildly guilty for making Falkland admit publicly to his crime.

Debates about the novel's resolution have also included comparisons of the novel's only recently discovered (mid-twentieth-century) original ending in which Caleb is defeated and sent to prison while Falkland goes free. Many critics wonder why Godwin would have published the more optimistic resolution after more than three hundred pages of pointed critique. Maurice Hindle suggests that by full disclosure of the truth and less tragedy, Godwin makes the novel less realistic, but closer to his ideology (xxxviii). Alternately, Gary Handwerk claims that the original ending clearly shows how status leads to a miscarriage of justice, while the revised ending reveals the limits of impartiality and reinscribes power relations since Caleb assumes guilt and continues to valorize Falkland. Gary Kelly says that the original ending was too melodramatic and roused the feelings rather than raising the "roots of...social protest" (190). He claims that the more optimistic, published ending gave readers hope that the revelation of truth was possible in a time of oppression. Kenneth Graham argues that the rewritten conclusion is more aesthetically pleasing and "demonstrates Godwin's suspicion of simplistic interpretations of any human action" (43). Others suggest that what appears to twenty-first century readers as Caleb's defeat is represented as victoriously and realistically as possible for late eighteenth-century expectations – particularly involving an individual with such a humble status as Caleb.

Possibly, the ambiguous ending accomplishes several tasks, all of them in line with the principles of restorative justice Godwin imagines. First, as Rajan has observed, the incomplete reconciliation makes the community – the reader – more participatory by urging us to "read beyond the ending." By showing the possibility of restoration, but not its manifestation, Godwin holds the community accountable for justice: he "passes on to

us the task of applying in our own lives the insight that comes too late to help characters” (187). He has taught us throughout the novel to recognize injustice and by the time we reach Caleb’s final acceptance of guilt for exposing Falkland, we know that before true resolution can be achieved, the disparate power dynamics need to be better balanced.

Second, the discord in consensus about the level of justice achieved may reflect an ongoing, and deeply-rooted, cultural belief in “the need for prosecution and punishment” (van der Merwe 44). This need was revealed in the recent studies done with participants of the Truth and Reconciliation Commission because “while the TRC pushed for a form of justice that would facilitate reconciliation, survivors demanded justice as a right in itself – both in the form of restorative and retributive justice” (44). Perhaps readers’ reflect this desire, in their uneasiness, for Falkner’s punishment as a right in itself. Discordant opinions on *Caleb Williams*’ final resolution may also underscore a healthy skepticism about adopting one model of justice wholesale, or at the very least, acknowledgment of the complicated, multilayered goal of striving for an idealistic paradigm that must also be pragmatic and possible. Audrey Chapman describes how in even the TRC’s report, a section entitled “reconciliation without forgiveness,” “acknowledges that a weak or limited form of reconciliation, without apologies by those responsible or forgiveness by victims may be the most realistic goal toward which to strive” (89). The ambiguity around Godwin’s two conclusions, and even skepticism about the optimism represented by the published version, reflects a reasoned investment in thinking about, and being critical of, the justice process. Suspicious of any sort of group think and a staunch promoter of individual reason, Godwin would have applauded such skepticism in his readers. Further, as Chapman notes, some doubt or

disappointment might merely reflect awareness of the flaws that emerge whenever we take the risk and apply a theory in reality. Godwin's novel offers that this risk is worth taking.

## V. CONCLUSIONS

In *Caleb Williams* Godwin intervenes in his cultural debate regarding criminal justice by critiquing chivalric and anarchic models of justice. He makes a thorough and scathing evaluation of the modern criminal system as well, highlighting the ways in which disenfranchised individuals suffer from unfair legal definitions of crime, impartial arbiters, inconsistent processes, and ineffective punitive outcomes. Throughout each of these critiques he draws his readers' attention to the harms this criminal justice system poses to individual and community alike. He suggests a more democratic, participatory alternative to the adversarial and retributive system his novel critiques, imagining a justice process which seeks disclosure of social imbalances that contribute to criminal behavior, recognition of victims' experiences, and inclusion of the community in determining outcomes and solutions to crime.

Despite its arguably hopeful ending, Godwin's novel eschews a black and white rendering of criminal justice. Instead, it confronts its murkiness. Down to the single units of language he chooses, Godwin makes readers aware of the blurry and sometimes elastic nature of truth, forgiveness, guilt and blame: on any given page, open up the novel and note how frequently some variation of the nearly visually identical words "persecute" and "prosecute" appear in close proximity – their closeness in shape causing us to pause, reflect, and question the distinction of their meanings and manifestations. While *Caleb Williams* does not always clarify concretely where the meaning of one starts and the other

ends, Godwin's novel asks readers to listen and be aware of imbalances, instead of encouraging certainty for the sake of closure.

Godwin encourages us to listen to Caleb's first-person narration throughout the novel, so that even if we cannot be sure of the complete veracity of Caleb's account, as readers we are invited into the literary work, as Martha Nussbaum tells us in *Poetic Justice*, "to imagine the concrete ways in which people different from oneself grapple with disadvantage" (xvi). The novel asks us to put ourselves in Caleb's place and consider his experiences of suffering and injustice, but further, by folding Caleb's testimony into a novel promoting a criminal justice model that privileges participation and recognition over certainty and punishment, *Caleb Williams* asks us to be part of a broader social change in the way we think about justice – as the first of many active agents in its pursuit. In describing the significance of the imagination to public life, Nussbaum says that we need "the construction of institutions, and institutional actors, who more perfectly embody, and by institutional firmness protect, the insights of the compassionate imagination" (xviii). With Caleb's story and the restorative justice model dramatized in his novel, Godwin offers readers the possibility of institutions built upon the compassionate imagination and seeks to transform us into actors committed to achieving and maintaining it.

In a letter to his friend in January of 1794, just five months before he finished *Caleb Williams*, Godwin wrote to LCS radical Joseph Gerrald in jail, capturing this desire for compassionate actors committed to justice and revealing his faith in a public forum for achieving it. He tells Gerrald:

Your trial, if you so please, may be a day such as England, and I believe the world, never saw. It may be the means of converting thousands, and

progressively, millions, to the cause of reason and public justice....Never forget that juries are men, and that men are made of penetrable stuff: probe all the recesses of their souls...Stand up to the situation – be wholly yourself... Above all, let me entreat you to abstain from harsh epithets and bitter invectives. Show that you are not terrible, but kind, and anxious for the good of all. Truth will lose nothing by this. Truth can never gain by passion, violence, and resentment. It is never so strong as in the firm, fixed mind, that yields to the emotions neither of rage nor fear. It is by calm and recollected boldness that we can shake the pillars of the vault of heaven... my whole soul goes with you. You represent us all. (C. Kegan Paul 358)

Godwin's optimism, his stirring prose, and the imaginative possibilities his novel articulates, remain powerful inspirations in the continued search for a means to truthful and restorative justice.

## Chapter Two

### Testimony, Trauma, and a Space for Victims: Mary Wollstonecraft's *Maria: or the Wrongs of Woman*

Why should we listen to an accused felon? Or a prostitute? What did eighteenth-century novelists like William Godwin and Mary Wollstonecraft imagine their readers could gain from hearing about the experiences of such social outcasts – those of Caleb and Jemima – and how are their voices still relevant today?

My previous chapter argues that in William Godwin's novel *Caleb Williams* (1794), Godwin differs from his contemporaries of the eighteenth-century "Classical" criminal justice school – such as Bentham, Beccaria or Howard – by imagining a less punitive, more restorative criminal justice model. Focused on the plight of Caleb as an innocent person falsely accused of a crime without the status to counter the accusation, Godwin's novel highlights the ways in which Caleb (and other) disenfranchised individuals suffer from unfair legal definitions of crime, impartial arbiters, inconsistent processes, and ineffective punitive outcomes. Throughout each of these critiques Godwin draws his readers' attention to the harms this corrupt criminal justice system poses to individual and community alike and the ways in which punitive measures (such as incarceration or solitary confinement) neither deter crime nor reform criminals. I posit that in the novel's final trial scene, Godwin imagines a justice process which seeks disclosure of social imbalances that contribute to criminal behavior, recognition of both the victim's and the accused's experiences, and inclusion of the community in determining outcomes and solutions to crime. In depicting a justice process that allows

both Caleb and Falkland to participate, Godwin also underscores the restorative effects of giving testimony.

Mary Wollstonecraft – not only Godwin’s wife and intellectual companion, but also an author writing at the turn of the eighteenth century about individual rights, citizenship, and the reform of social institutions – likewise intervened in cultural debates regarding justice in her fiction. Seeking to disclose the “misery and oppression, peculiar to women, that arise out of the partial laws and customs of society,” Mary Wollstonecraft develops and extends Godwin’s criminal justice concerns by focusing on the legal disadvantages of women in her unfinished novel *Maria: or the Wrongs of Woman* (1798). By depicting Maria’s incarceration as an effect of coverture, which excluded women from owning property, making laws, being tried by a jury of their peers, or entering the legal profession, Wollstonecraft emphasizes the legal disadvantages of gender. Further, while Godwin lays out restorative processes and outcomes in his novel by focusing on the plight of individuals unfairly accused based on class, Wollstonecraft draws readers’ attention to Jemima – a *victim* marginalized by the justice system because of her class, gender, and the nature of her crime. By means of Jemima’s confessional narrative, Wollstonecraft builds on Godwin’s depiction of the restorative value of testimony as integral to an equitable justice process.

Just as Godwin’s contributions to criminal justice are significant because, first, they are rooted during the historical era of reform that shaped Western criminal justice paradigms for the next two hundred and fifty years and, second, they diverge from the dominant punitive model by advocating for more restorative ideals only validated relatively recently, Wollstonecraft’s attention to victim testimony is significant in similar

ways. Like Godwin's, Wollstonecraft's contribution in *Maria* also comes at a historical period instrumental to the future role of victims within the criminal justice system.

Further, in her recognition of a victim marginalized from the justice process and her advocacy for the restorative value of testimony, she anticipates the demand of modern victims' rights advocates for increased victim participation within the justice process.

Modern criminal justice scholars support the claim that Wollstonecraft's historical era was instrumental in shaping the role of the victim in justice processes. In James Dignan's *Understanding Victims and Restorative Justice* (2005), he explains that the late eighteenth and early nineteenth century is often referred to in modern criminal justice discussions as the "era of disenfranchisement" (63). According to Dignan, this 'disenfranchisement' stems from the era's changes in trial format: As discussed in my previous chapter, the shift from the "old" to "new" trial format meant that victims and accused participated less in the justice process as legal advocates were gradually introduced into the trial. Greater reliance on circumstantial evidence and less trust in first-person direct testimony to prove the facts of a case, also contributed to this reduced participation by both victim and accused.

Dignan explains how these changes had an impact on victims: as "crime henceforth came to be viewed principally as an offence against the state... The subsequent neglect of victims during the era of disenfranchisement came to be reflected in terms of their status, role and entitlement to redress" (64). Further, he argues that the "distancing and disempowerment" of victims initiated during Wollstonecraft's historical period has had far reaching consequences for Anglo-American justice today. Dignan says that by

largely removing victims from the process, the criminal justice system has failed in multiple ways:

First, it has failed to acknowledge the special status of victims arising from the fact that they have personally suffered harm of some kind as a result of the offence. This failure has been compounded by a withholding of relevant information and a reluctance to provide victims with appropriate support. Second, it has denied victims any formal role in the proceedings except on the limited occasions when they were needed in order to pursue criminal justice goals, in which case their involvement was purely instrumental. Third, it has failed to provide any material redress for the personal harm that victims might have sustained. As a result, all victims were for many years disenfranchised from the system, and many felt disempowered, exploited or even traumatized as a result of their experience. (65)

But if Dignan and other victims' rights advocates claim that since the formal changes to trial practice the criminal justice system has failed to acknowledge victim's suffering, denied them a formal role in proceedings, and essentially added to the trauma of their victimization by furthering their feeling of powerlessness, what about victims who were already disenfranchised leading up to formal changes? What can we learn from individuals, writing during the midst of these changes, who were concerned about such marginalized victims and who sought an equitable, participatory justice system even before the intervention of legal advocates?

Just as Godwin's restorative ideals of recognizing the disenfranchised, attending to social causation of crime, and participating in the justice process come at a moment of historic change perhaps fueled by his belief in the democratic principles of the French Revolution, Wollstonecraft's intervention into criminal justice, rooted in similar democratic ideals, also seeks equitable and restorative reforms. Specifically, via Jemima, she draws readers' attention to marginalized victims of crime. She establishes the value of testimony as integral to acknowledging an individual's autonomy regardless of social

status, while she also demonstrates that the opportunity to speak about private abuse, and be heard, aids in an abused individual's conception and recovery of self. Finally, she anticipates the need for a public space to acknowledge abuse in order to expose and correct legal and social injustice.

Wollstonecraft's representation of victim testimony offers a text with a unique perspective relative to other critical discussions surrounding this era of legal change. While the effects of the transition from the "old" to "new" trial format have been considered from interdisciplinary perspectives, many studies have focused primarily on its effects to the accused. For example, Beattie's and Langbien's legal histories have considered how these shifts empowered professional agents of the state, thereby silencing the voice of the accused during trial. Welsch's and Schramm's literature and law studies have examined the way eighteenth-century novelists replicated and problematized the initial fascination with circumstantial evidence in their realism, gradually giving way to the value of individual experience by giving voice to the accused in their Victorian-era fiction. While these studies underscore how professional advocates altered the participatory role of the accused and reduced the significance of first person testimony, the significance of changing attitudes towards victims' testimony – and fictional authors' responses to the change – has not been critically addressed. Wollstonecraft's novel *Maria* offers one entry point for such reflection.

Further, although Godwin's contribution to the criminal justice debate has been considered more seriously within the last decade, critical consideration of Wollstonecraft's legal contributions have been more limited.<sup>21</sup> Nancy E. Johnson's *The*

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<sup>21</sup> For example, Kenneth's Graham's *The Politics of Narrative* (1990) discusses the role of trials in *Caleb Willaims* as "an emblem of the open society he advocated, an environment where truth may emerge despite

*English Jacobin Novel on Rights, Property and the Law: Critiquing the Contract* (2004) examines Wollstonecraft's political views and her perspective on law and rights theories, claiming that Wollstonecraft "saw in the potential reconstitution of the individual's relationship to the law, through a comprehensive theory of rights in a protective social contract, a strengthening of the individual distinct from the family and preparation of the individual endowed with agency for political participation" (55). Johnson discusses *Maria* in connection with Wollstonecraft's concern for women's political agency and legal recognition, but her discussion focuses mainly on Wollstonecraft's central character of Maria, only touching on Jemima's role and not considering her representation as a victim or the significance of her testimony within criminal justice debates.

Adam Komisaruk and Elaine Jordan both discuss Wollstonecraft's critique of criminal conversation in *Maria*.<sup>22</sup> But while both articles suggest Wollstonecraft's interest in legal matters, they are also concerned primarily with Maria's role in the novel and limit discussion to the civil action of criminal conversation, rather than focusing on marginalized victims in the criminal system. Hal Gladfelders's *Criminality and Narrative in Eighteenth-Century England: Beyond the Law* (2001) comes closest to examining Wollstonecraft's contribution to criminal justice debates. He notes

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confusion and prejudice" (33). Hal Gladfelder's *Criminality and Narrative in Eighteenth Century England: Beyond the Law* (2001) places *Caleb Williams* among texts working to subvert an ideology of punishment, arguing that it "ultimately permi[ts] a radical critique of the law itself as an instrument for the enforcement of oppressive gender and class relations" (xii). Jonathan Grossman's *The Art of Alibi: English Law Courts and the Novel* (2002) considers how *Caleb Williams*' form and subject matter shifted along with legal changes during the nineteenth century, particularly in terms of a structured, suspenseful plot and its connections to the genre of criminal biography. Nancy E. Johnson's *The English Jacobin Novel on Rights, Property, and Law* (2004) devotes a section to discussing agency, status, and the right of property as means to granting legal autonomy in *Caleb Williams*.

<sup>22</sup> Jordan defines criminal conversation as the "name of the action in common law by which a husband could claim damages from the seducer of his wife: money in compensation for his lost honour, and all the benefits of cohabitation with his wife" (223).

Wollstonecraft's use of the novel's final trial scene as a form that "allows the airing of oppositional and often dangerously popular ideologies whose articulation is otherwise suppressed" and validates Maria's use of "the legal mechanism set in motion to restrain her, to call for a radical overturning of the laws to which women and the poor are so peculiarly subject" (218). Despite the value of Gladfelder's discussion of *Maria*, it takes up just a third of the epilogue within his larger study of eighteenth-century criminal discourses and the political messages they promoted. Further consideration of Wollstonecraft's representation of Jemima, as a marginalized criminal victim, and her discussion of the restorative value of testimony, would add to our understanding of the way writers imagined criminal justice reform in their fiction. These critical considerations confirm what Moira Ferguson notes, that, "the maid Jemima...is so often passed over by critics" (13); neglect of Wollstonecraft's representation of Jemima suggests a critical gap that needs to be filled.

Wollstonecraft's contribution to criminal justice has perhaps been limited because scholars believed her knowledge of criminal justice to be minimal. While neither Wollstonecraft's political tracts nor her fiction engage directly with criminal justice debates as Godwin's do (he directly addresses both Howard and Beccaria), she does seem to have had factual knowledge of criminal legal issues, as well as social and economic conditions, effecting disenfranchised individuals. Gary Kelly notes that

Wollstonecraft may have used sources such as the *Newgate Calendar* and Bladon's *Trails for Adultery*...and *Maria* includes much factual material appropriate for a continuation of *A Vindication of the Rights of Women*: on the legal situation of women; their property and marriage rights; divorce and child custody; employment opportunities; wages and working conditions; prostitution and policing; charitable institutions; control of the poor through parish relief and workhouses; crime and punishment" (211).

Aside from this knowledge, which perhaps shapes her representation of Jemima, we also know from her reviews in Joseph Johnson's periodical, the *Analytical Review*, that she both read and commented on texts that addressed legal and penal reforms.

For example, in the *Analytical* she reviewed *Speculations upon Law and Lawyers; applicable to the manifest Hardships, Uncertainty, and abusive Practice of the Common Law* (Volume II, 1788). Just as Godwin's restorative model advocates for minimal legal intervention in criminal processes because of rampant professional abuses, her review tells us that "The principal object of the author, as he informs us in the introduction 'is to point out a variety of glaring abuses, preposterous proceedings, oppressive measures, scandalous fictions, enormous exactions and increasing evils to the subject and to the state, arising from infamous practice.'" Minimal legal intervention in favor of more direct participation by those involved in legal conflict both supports Godwin's claims in *Caleb Willaims* as well as anticipates modern restorative justice ideals, which grant greater agency to victim and offender.

Beyond her knowledge of critiques aimed at lawyers and legal professionalization, she also reviewed literary works addressed at issues of penal reform. Her reviews of *Verses to John Howard, F.R.S. on his State of Prisons and Lazarettos* (Volume VI, 1790), *The Prison, a Poem* (Volume VII, 1790), and *Juvenile Poems, with Remarks on Poetry, and a Dissertation on the best Method of punishing and preventing Crimes* (Volume X, 1791) indicate her awareness of debates surrounding prison conditions and the move toward rehabilitation through solitary confinement put forth by John Howard. Aside from these fictional works, her review of *A View of England towards the Close of the Eighteenth Century* (Volume IX, 1791) comments in particular

about a section entitled “On the English Laws, Courts of Judicature, and the Manner of Administering Justice,” stating that “After some just encomiums the author adds a few strictures on some obvious abuses which strike every thinking mind; -- the carelessness or the levity with which oaths are taken and administered in English courts; the sanguine complexion of our laws; and the manner of executing criminals.” Finally, her review of *On the Prevention of Crimes, and on the Advantages of Solitary Imprisonment* (Volume XIII 1792) suggests a skepticism shared by Godwin regarding solitary confinement as a means to deter crime and reform criminals. Wollstonecraft’s review observes,

The humane writer of this tract recommends solitary imprisonment as the best method to prevent crime. Much may be said on this subject, which comes home to every bosom; but to confine ourselves to the present point, we shall submit a few hints to the consideration of those who are concerned in the regulation of prisons. We have always doubted, expecting in the case of murder, whether solitary imprisonment would effect any permanent reformation, unless the offender were taught some trade.

Like Godwin, Wollstonecraft seems to doubt the reformatory power of solitary confinement because she sees isolation as further alienating, rather than used as a means for rehabilitation. Rather, we see her belief in the social nature of repairing harms in the way she depicts Maria, Darnford, and Jemima, a community healing through listening to, and interacting with, each other.

Although Wollstonecraft leaves behind less evidence than Godwin’s political manifesto, which explicitly lays out criminal and penal reforms in *An Enquiry Concerning Political Justice* (1793), therefore, her entries in the *Analytic Review* suggest her exposure to criminal justice debates. Further, her investment in individual rights, citizenship, equitable political opportunity, and greater legal inclusion for the marginalized – all aspects critical to a restorative, participatory criminal justice system – is documented in her political tracts *A Vindication of the Rights of Men* (1790), *A*

*Vindication of the Rights of Women* (1792), and *An Historical and Moral View of the Origin and Progress of the French Revolution* (1794). Wollstonecraft's fictional intervention into the legal abuses practiced against women, *Maria: Or the Wrongs of Woman*, blends her knowledge of criminal justice debates and her desire for political reform by drawing our attention to a lower-class woman marginalized and silenced by the criminal justice system. Nancy Johnson explains that "The novel enabled her to reveal the impact of legal abuses on women who are unprotected by rights to reach an audience that might not have had exposure to [her] essays" (14). In her representation of Jemima, Wollstonecraft imagines a space to recognize and give voice to the disenfranchised. She underscores the significance of recognizing victims within the justice process, and she suggests the restorative possibilities of testimony for individual and community alike.

### III. HISTORICAL CONTEXT: PROPERTY, INDIVIDUAL RIGHTS, AND AUTONOMY IN *MARIA*

Before beginning consideration of Wollstonecraft's representation of Jemima, it is first important to understand how Jemima's testimony fits into the novel's larger critique regarding legal abuses, and then to connect her episode to the novel's demand to expand individual rights to women. Wollstonecraft saw individual autonomy, regardless of gender, as critical to a healthy community. Wendy Gunther Canada explains that "Coming of age in an era of democratic revolution, Mary Wollstonecraft was the first to make an explicit and systematic argument for women's political rights as autonomous citizens with duties to themselves and their countries" (10). Wollstonecraft saw autonomous citizens as individuals with developed subjectivities as well as duties to the larger community. In her earlier non-fiction tract, *A Vindication of the Rights of Women*, Wollstonecraft proposes that greater autonomy can be granted to women through

educational reform. Not only in order to be good wives and mothers, but also in order to be good citizens, women should not be educated as romantic, impractical flirts, but rather women should be encouraged to develop subjectivities rooted in reason and civic duty. While she proposes education as a means to achieve this in *A Vindication of the Rights of Woman*, her fiction puts forward another way in which Wollstonecraft envisions translating this theory of autonomy and civic duty into practice – by granting women the opportunity to take part in the justice process.

In *Maria: Or the Wrongs of Woman*, Wollstonecraft represents the autonomy that should be granted by giving women greater legal and political rights. She attacks “male primogeniture as the principal support for political rights,” thereby highlighting the injustice of denying individuals the opportunity to claim legal rights because they are denied the opportunity to claim ownership of property (Falco 9). As Nancy Johnson has suggested, Wollstonecraft examines the links between autonomy and individual rights in her novel by means of Maria’s demand to be heard in the justice system, despite her exclusion based on gender, and therefore, her ability to claim legal status as an owner of property. Johnson describes how in Wollstonecraft’s critique of the individual rights denied to women based on property ownership, she attempts to extend an understanding of property to include a form of ownership of the self beyond mere ownership of material goods: “In *Wrongs of Woman*, Wollstonecraft argues that without an inalienable claim to ownership of the self, recognized by civil society, women were not only excluded from the process of justice but unable to ‘own’ – that is, direct the management of – property” (140).<sup>23</sup> Johnson claims that Wollstonecraft implies a definition of “property” that would

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<sup>23</sup> Johnson grounds her discussion of agency and property in eighteenth-century conceptions of social contract theory as espoused by Locke, Sidney, and Rousseau. She claims that Jacobin novelists “had to

allow women greater individual rights and political recognition, a definition in which “property” implies autonomy and ownership of self.

One of the ways that Wollstonecraft suggests this ownership of self can be acknowledged and granted, throughout her novel, is through institutional admission of individual experience. Wollstonecraft stresses the importance of being heard by means of Maria’s personal history to her daughter, which makes up a large part of the novel, as well as by means of Maria’s insistence on submitting a written testimony, which she asks to be read to the court, detailing the abuses of her marriage in the novel’s final scene. Although both Adam Komisaruk and Elaine Jordon have acknowledged the validity of the criminal conversation suit brought against Darnford at the novel’s unfinished conclusion, both have also noted Wollstonecraft’s fantastical construction of Maria’s written testimony – since in criminal conversation cases neither the plaintiff nor the defendant was allowed to testify. Komisaruk describes the “confidence with which she defies convention by insisting that her voice be heard” (11), and Jordan adds that “Maria’s self-representation offers two vindications of a woman...It’s important that one of these vindications fantasizes a woman able to speak judiciously in public” (224). Rather than making the episode less important, because it is fantastical, Wollstonecraft makes the episode more significant in her imaginings – she dramatizes granting a woman the autonomy to be recognized in a public forum.

By insisting that Maria’s story be told and be heard, Wollstonecraft emphasizes the legal value of allowing women’s narratives to be disclosed and acknowledged as a

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address the fact that while contract theory was a means to expanding the body politic not everyone was considered a free agent qualified to enter into a binding agreement. Thus, they went in pursuit of agency that would bolster ‘the ‘individual’ as owner” (110). She analyzes how Jacobin novelists react to this exclusion in their fiction.

critical element to granting individual autonomy. Moreover, by also including Jemima's private narrative, she extends the notion of autonomous subject by recognizing the stories of women even further removed from legal or propertied status. Nancy Johnson supports the value of private experience to autonomy when she explains that "Because subjectivity was essential to enfranchisement, private history became an important component of the English Jacobin novel" (17). Wollstonecraft indicates in Jemima's private narrative that recognition of subjectivity is essential to enfranchisement, but it is also essential to individuals regardless of social status. Perhaps even more importantly, it is essential to victims of crime. While Maria suggests the value of granting women legal autonomy in a civil justice system, then, Jemima draws attention to the value of granting victims the opportunity to participate and receive recognition in a criminal justice system.

#### **IV. REPRESENTATIONS OF JUSTICE: UNACKNOWLEDGED VICTIMS AND JEMIMA'S MARGINALIZATION**

Jemima's narrative is significant, generally, because it draws attention to the plight of a woman even further disenfranchised than Maria. When Wollstonecraft constructs and includes Jemima's narrative within her novel, to "show the wrongs of different classes of women," as she says in her Preface, she underscores the value of women's autonomy, regardless of status. Nancy Johnson acknowledges that, even in other English Jacobin texts, Jemima is "one of the few lower-class characters of central importance" (148), and, while Vivian Jones recognizes her story as part of fairly common "eighteenth-century prostitution narrative[s]," she also grants Wollstonecraft credit for avoiding the sentimentalism typical of the genre and giving Jemima more agency than was typical of this "redeemable victim" trope. Jones locates Jemima's agency in her "independent skepticism rather than...passive sensibility – and never in abject penitence"

(211). Importantly, she also notes that “Maria, the middle-class audience for Jemima’s narrative, is both present in the novel, and similarly, though not equally, the object of abuse...drawing attention to the similarities – and the negotiated differences – between speaker and listener” (211). Wollstonecraft’s inclusion of Jemima’s narrative underscores the different abuses women of lower social status suffered in the legal and criminal justice systems. As we will see, it also underscores the value of community recognition of such disparities.

Jemima’s narrative is significant, specifically, because it draws attention to the multiple crimes unacknowledged, and seemingly permissible, for working-class women victims within Wollstonecraft’s social and judicial system; she suffers beatings from her father, she is raped – repeatedly – by her master, she is physically assaulted by her master’s wife, she is subjected to harassment and bribery by the police, and she is forced to undergo experimentation by the medical community. Throughout each of the crimes Jemima lacks the status to protect herself. Ferguson explains the validity of these crimes: “The list of specific misfortunes Jemima faces may be implausibly long. But the individual misfortunes were all common enough and real enough so that she is a compelling composite picture of the plight of poor women in Wollstonecraft’s time” (15). Wollstonecraft’s depiction of Jemima’s rape by her master becomes particularly important in our discussion of victims marginalized from the criminal justice system and serves as one example of the way Wollstonecraft suggests lower class women were legally disenfranchised and oppressed.

Godwin hints at inequities based on a victim’s social status in *Caleb Williams* – he depicts the way Hawkins’s case is dismissed because Barnabas Tyrrel commits the

crime and not only has the social status to intimidate the court, but also has the financial means to hire a lawyer. Godwin also represents Grimes' near rape of Emily, which goes uncharged. Anna Clark supports Godwin's depiction of these disparities in the eighteenth-century legal system, explaining that the "legal system served the interest of the propertied classes by ensuring the submissiveness of working people" (46).

Wollstonecraft extends Godwin's discussion of disparities towards victims in *Maria* and draws readers' attention to the way gender and the nature of the crime – as well as social status – factor into inequities in the justice system. Like Godwin, she unpacks culturally influenced legal definitions to reveal their failure to fairly protect certain individuals.

Wollstonecraft's depiction of Jemima's silent suffering – her rape unreported, unacknowledged, and unpenalized by the justice system – represents a realistic representation of what happened to many victims of sexual crime during the eighteenth century. In her important study, *Women's Silence Men's Violence* (1987), historian Anna Clark looks at over one thousand cases of sexual assault between 1770 and 1845 in London and the Northeast of England (15).<sup>24</sup> Her study helps us better understand justice processes and outcomes for victims of rape, which a woman such as Jemima would confront, as well as reveal the way that Wollstonecraft emphasizes the harmful repercussions women faced regarding legal definitions of property.

Just as Maria's abuses stem largely from legal definitions of property (not only is she denied political opportunities, all that she materially owns and even her right to make decisions about her own body is subsumed by her husband), so too is Jemima

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<sup>24</sup> Clark looks at court transcripts, depositions, and local newspapers. She notes that "from 1796, the Old Bailey Court began to suppress the publication of transcripts of sexual crimes" (17). This suppression underlines the dominant attitude toward silencing and marginalizing victims of rape, which Wollstonecraft depicts.

marginalized and abused by attitudes regarding property rights. Attitudes about the nature of rape as a crime were strongly related to a woman's right to claim ownership of her body. Clark explains that, although,

rape was a capital crime up until 1841...the justice system only punishe[d] rape if it infringe[d] on another man's property rights in a woman...if a man believed he had a right to sex from a woman, and she refused, he could rape her, seeking sexual satisfaction and violent revenge despite her lack of consent. Men did not rape because they had an uncontrollable sexual urge; rather, men who raped believed that sex involved the 'taking' of women and that they had a right to women's sexuality...the notion of women's sexuality as property...blocked women's efforts to articulate rape as a crime committed against them. (6-8)

This attitude toward women's bodies was harmful to women of all classes – as we see with Maria, “husbands could sue their wives' lovers for ‘criminal conversation’; fathers...could sue their daughters' seducers, ostensibly for loss of services” (Clark 48). As pointed out earlier, Wollstonecraft stresses her critique of this definition of property, which stripped women of control over their own bodies, when Maria insists on her own agency in her affair with Darnford, during the final trial. If she suggests the injustice that this definition presented for middle-class women, Wollstonecraft also underscores how legally defining women's sexuality as men's property was particularly harmful to a woman of Jemima's status.

Jemima's narrative suggests that working class women faced greater danger and less legal protections as victims of rape. The relationship between sexuality, property, and class placed working-class women in greater danger because their sexuality was less valued and considered by some as a shared commodity. Clark explains that “everyday rapes of labouring women stirred little sympathy...For some men, the low value placed on chastity of poor women, and public indifference to their fate, may have encouraged libertinism which excused rape” (21-2). Jemima's rape by her master reflects the attitude

that laboring women's sexuality could be exploited (Clark 22). She is vulnerable to attack because she is a subordinate in her master's home; Clark says "most young working women were domestic servants...Masters seemed to believe that they had a right to their servants' or apprentices' sexual favours, a right that they would claim by force if their servants did not acquiesce" (40).<sup>25</sup> When Jemima recounts her rape, she confirms the vulnerability of her status within her master's house, explaining

My master had once or twice caught hold of me in the passage; but I instinctively avoided his disgusting caresses. One day however, when the family were at a Methodist meeting, he contrived to be alone in the house with me, and by blows – yes; blows and menaces, compelled me to submit to his ferocious desire...I was obliged in the future to comply, and skulk to my loft at his command, in spite of increasing loathing. (57)

Wollstonecraft's representation of Jemima's rape demonstrates the way that attitudes about laboring women's bodies placed them at higher risk of abuse: her master exploits her sexuality because of her status as his servant. Wollstonecraft's representation of Jemima's fervent resistance to this sexual abuse additionally serves to belie notions that working-class women placed less value on their sexuality than women in the middle rank.

Jemima's rape by her master also underscores Wollstonecraft's suggestion that lower class women faced less protection from, or legal redress against, such abuses. Clark says that "Gentlemen could rape poor women without impunity" (40). Not only does her master's crime go unpunished, Jemima is turned out of doors – pregnant, beaten, and destitute – once her mistress finds out that Jemima "had wheedled her husband from her" (58). In her mistress's mistreatment of Jemima, Wollstonecraft underscores how cultural attitudes about lower-class women's sexuality also shaped middle-class women's

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<sup>25</sup> Clark reports that "Twenty-per cent of the Old Bailey rapes...involved masters and servants" (40).

perceptions of rape – her mistress blames Jemima for being “born a strumpet” (58), rather than seeing her as a victim of her husband’s aggressive sexual advances.

The pervasiveness of these cultural attitudes towards working class women’s sexuality impacted criminal justice processes and outcomes regarding rape. The discourse of shame surrounding rape and the devaluation of women’s sexuality meant that many victims never reported the crime at all. Of the women who did feel strongly enough to report the crime, most rapes were never prosecuted (50). Charges on behalf of laboring women were even less likely to be prosecuted, since, for judges and juries “they considered that such women did not have chastity worth damaging” (Clark 56). The reality of working-class women’s limited redress as victims of rape is substantiated by Clark’s claim that “no master was punished for rape in the eighteenth-century records [she] examined” (41).<sup>26</sup> Attitudes that deemed women’s sexuality the property of men, as well as criminal justice processes and outcomes that served the interest of the ruling class, failed to protect women with a social status such as Jemima’s.

While other literary works of the time often upheld and maintained prejudicial attitudes toward women’s sexuality, Wollstonecraft’s depiction of Jemima performs a different function. Unlike authors, such as Richardson, who used rape as a literary motif to encourage women of the middle-rank to protect their sexuality, Wollstonecraft’s representation of Jemima’s rape draws readers’ attention to the way working-class women often had little means for such protection (Clark 21). Unlike the prostitution narratives, which sought “to contain the prostitute as redeemable victim,” Wollstonecraft

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<sup>26</sup> However Clark’s findings regarding guilty verdicts for rape, regardless of the status of the victim, don’t suggest much higher rates. She reports that “In the London Old Bailey Court between 1770 and 1800, out of forty-three men tried for rapes of females over twelve, only three were found guilty (and two of them had raped fourteen-year-old-girls)” (58).

depicts Jemima as a victim of crime, but as a *survivor* of rape – she is not abject, helpless, or prone to vice (Jones 215). Instead, as a woman who shares the crimes perpetrated against her, Jemima educates readers as to the institutional and systemic causes contributing to her status and victimization. Wollstonecraft empowers her as an agent that gains autonomy throughout the novel. Finally, rather than representing Jemima’s victimization as an apparatus to attack the aristocratic libertine, as Clark argues many Jacobin authors do (15), Wollstonecraft makes Jemima the subject of her own experience and exposes the far reaching abuses practiced against working-class women.<sup>27</sup>

Further, as the next section demonstrates, by giving Jemima ownership of her own narrative, Wollstonecraft suggests the restorative value of giving testimony – the way in which the opportunity to speak about private abuse, and be heard – aids in a victim’s conception and recovery of self. By applying contemporary trauma theory – theory that considers how subjectivity is (re)gained through testimony – we can begin to understand how Jemima’s narrative demonstrates the process, and the significance, of testimony as a means to achieve individual autonomy after being the victim of abuse or crime. We can see how, as Godwin does in *Caleb Williams*, Wollstonecraft advocates for a restorative

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<sup>27</sup> Related to these criticisms, Cora Kaplan combines and extends them in her article, “Pandora’s Box” (1991), when she argues that nineteenth-century middle and upper class women authors, such as Wollstonecraft, “understood and represented their own being” by “projecting and displacing on to women of lower social standing and women of colour...all that was deemed vicious and regressive in women as a sex” (871). She claims middle class women authors depicted characters such as Jemima as either corrupting agents or brutalized victims in order to distinguish their own identity and behavior from these social “others.” I agree with Kaplan that Wollstonecraft does sometimes convey these attitudes about working-class women in both her private writings and her *Vindication*. Less than a desire to differentiate herself, I think these sentiments are an unfortunate reflection of her cultural and historic era as well as a rhetorical move to instigate a reaction. Furthermore, Wollstonecraft indeed *is* representing Jemima as victim, but she is doing so in order to represent actual social and legal injustices that were occurring, and *differently* affecting women of different classes. Finally, as mentioned, Wollstonecraft represents Jemima as a survivor, not only a victim; she appropriates her voice but not in order to further objectify her. Rather, by representing the first-person testimony of a working-class woman, Wollstonecraft highlights the need to make legal space available that would recognize the subjectivity and autonomy of women of all classes, as this chapter hopes to demonstrate.

criminal justice model that seeks to repair harm by providing individuals recognition and the space to be heard.

#### **V. TESTIMONY AND TRAUMA: RESTORING JUSTICE BY MAKING SPACE FOR VICTIMS**

Irene Kacandes describes the different ways to apply trauma theory to fiction when she explains that “with various levels connected through the medium of narration itself in mind, we can think about narratives ‘of’ trauma, but also narratives ‘as’ trauma” (56). In Diane Long Hoeveler’s reading and analysis of *Maria*, she considers narrative as trauma. Or, to put it another way, she considers the ways the narrative form and content of *Maria* reveal the author’s own recurring trauma. Hoeveler describes how Wollstonecraft’s fictions “provide one test case for revealing the cognitive value of trauma as a source for literary creativity” and claims that “[Wollstonecraft] attempted in *Maria*...to reshape and replay her life and its major crises almost as if she were turning an object around in her hand, looking at her wounds from different angles in order to understand and control them” (388). In the context of understanding Wollstonecraft’s preoccupation with victim autonomy and restorative justice processes, it is also possible to read Jemima’s private testimony as a narrative “of” trauma – that is, an attempt by a character *within* her text to “understand and control” past experiences. Wollstonecraft depicts this process in several ways that are significant to restorative justice. First, she underscores the effects of the harm caused by the crimes perpetrated against Jemima and acknowledges the severe trauma they inflict on her. Next, she dramatizes the process of a survivor’s recovery through the restorative possibility of testimony.

First, Wollstonecraft depicts the effects of the harms inflicted on Jemima. She represents the way the crimes have traumatized her and damaged her sense of self.

Wollstonecraft suggests from early in the novel that Jemima's behavior reveals a disconnect from human relationships. For example, Jemima is in the unique position, as a servant, of being in control of someone who would normally be superior to her in status, but rather than taking advantage of this position of power, she barely asserts any sign of agency at all. Susan Brison notes that such dejected behavior may be one consequence of trauma; she says, "When the trauma is of human origin and is intentionally inflicted...it not only shatters one's fundamental assumptions about the world and one's safety in it, but also severs the sustaining connection between the self and the rest of humanity" (40). Jemima's initial behavior – her apathy towards her unlikely power position – suggests this severed connection.

Wollstonecraft highlights this withdrawal from human relationships in other ways as well. Her characterization of Jemima represents the behavior of a victim-survivor suffering from an unacknowledged trauma. For example, Jemima is mistrusting of people and isolated; the narrator says that "[Maria] failed immediately to rouse a lively sense of injustice in the mind of her guard, because it had been sophisticated into misanthropy" (28). She describes Jemima as "an insulated being...she despised and preyed on the society by which she had been oppressed, and loved not her fellow-creatures" (31). She suggests that Jemima's emotion exists buried under the surface, but due to previous experiences, her emotion has retreated beyond reach of human contact; the narrator says, "[Maria] discovered in [Jemima] a strength of mind, that excited her esteem, clouded as it was by the misanthropy of despair" (31). She depicts Jemima's frequent shift between a desire to trust Maria and a complete withdrawal from human affection, such as when we are told, "when [Jemima's] heart appeared for a moment to

open, some suggestion of reason closed it before she could give utterance to the confidence Maria's conversation had inspired" (34). Jemima's withdrawal in *Maria* parallels Falkland's withdrawal in *Caleb*, and although the two are diametrically opposed in rank, gender, and status as victim/offender, Godwin's and Wollstonecraft's points are the same: alienation from the community neither repairs harm to victims nor serves to reform offenders – it removes individuals from being functioning members of society, exasperating the trauma caused by the initial crime.

Beyond withdrawal, Wollstonecraft represents how the resultant harm from unresolved trauma can lead to a fractured sense of self for victims, potentially leading to community wide repercussions. For example, Jemima explains that at times she resorted to stealing, lying, and yielding her body to men she detested as mechanisms for survival. She confesses, "To save myself from these unmerciful corrections, I resorted to falsehood" (54), "I picked the pockets of the drunkards who abused me" (59), "became a thief from principle" (68), and "Detest[ed] my nightly occupation, though valuing, if I may so use the word, my independence, which only consisted in choosing which street to wander" (60). Wollstonecraft suggests, as Godwin had with Caleb, that one result of an inequitable justice system that fails to address harm may be a desperate turn toward criminal activity; Jemima's behavior changes after her victimization and she acts out in destructive ways in order to survive. Moreover, Jemima's confessions here parallel what Ernst Van Alphan describes in victims of trauma as "uncertainty [that] results in an ambiguous, battered feeling of subjectivity...neither subject nor object" (29). Wollstonecraft reveals the conflicted autonomy felt by individuals repeatedly abused because, as Jemima describes, they are unable to determine where their responsibility and

agency begins and where their victimization and subjugation by others ends. After her trauma, Jemima reflects this conflicted subjectivity; for example, she acts with agency when she steals or employs her sexuality as a means of income, but at the same time, her sense of shame for her dishonesty and her awareness of her exploitation reduce her to an abject status.

Wollstonecraft further underscores the manifestation of harm in victims when she details Jemima's emotional state. Jemima exhibits what Brison describes as another stage of conflicted subjectivity experienced by victims of crime; Brison explains "trauma can obliterate one's former emotional repertoire, leaving one with only a kind of counterfactual propositional knowledge of emotions...the inability to feel one's former emotions, even in the aftermath of trauma, leaves the survivor not only numbed, but often without the motivation to carry out the task of reconstructing an ongoing narrative" (44). Jemima testifies to this numbness, displacement of emotion, and desire for death several times throughout her narrative as she recounts not only the trauma of her rape, but the traumas induced by her social circumstances. She describes numbness after her first severe taunting by peers when "sullen pride, or a kind of stupid desperation, made me at length, almost regardless of contempt" (56). After her rape she explains her changed outlook and displaced emotions: "The anguish which was now pent up in my bosom, seemed to open a new world to me: I began to extend my thought beyond myself" (57). After she is abandoned again, she tells that "To be cut off from human converse, now I had taught to relish it, was to wander a ghost among the living" (63). Finally, she reveals what Brison refers to as a loss of interest in "reconstruct[ing] and ongoing narrative," when she wishes for death after her abortion (59). In each of these representations of

Jemima's post traumatic stress, Wollstonecraft underscores the suffering inflicted on victims of trauma.

While Wollstonecraft constructs a detailed picture of the extent of harms inflicted on Jemima, and the consequence of leaving these harms neglected, she also imagines the restorative possibility of giving space to victims so that these harms can be at least partially repaired. In the retelling of these traumas, about half way through her narrative, Jemima pauses for a moment of reflection. Before she considers the causal effects of her early traumas, she says, "Allow me to make one observation. Now I look back..." (56). In this instance, Wollstonecraft draws our attention to the significance of Jemima's process of testimony and its value in helping Jemima to (re)gain a sense of self. Brison notes that "Narrative memory is not passively endured; rather, it is an act on the part of the narrator, a speech act that defuses traumatic memory, giving shape and temporal order to the events recalled, establishing control over their recalling, and helping the survivor to remake a self" (40). Therefore, by giving Jemima control of her narrative, Wollstonecraft not only suggests the value of the autonomy achieved by granting women the agency to tell their story, she also reveals the restorative power of testimony as a means for a victim to recover a sense of self and experience. By allowing victims to put in order, shape, and reflect on their trauma, they can begin to contain traumatic experiences and regain a sense of their own subjectivity. Jemima's process of testifying allows Wollstonecraft to emphasize all that is potentially lost by marginalizing victims from the justice process; preventing the act of testimony prevents the act of regaining control over past traumatic events, and thereby over a victim's subjectivity. Katherine van Wormer underscores the benefits to making space for survivor testimony in

contemporary restorative justice practice; she explains “[s]uch conferencing can attend to the psychological as well as the physical abuse a survivor has experienced and counter her sense of helplessness by involving her as an active participant in the process” (111). She helps us understand how Jemima’s testimony is restorative not only in terms of the emotional subjectivity she regains but also in terms of the empowering potential of becoming the subject of her own experience again, after her agency has been taken from her. Wollstonecraft represents the significance of active participation by a victim in seeking to repair harm.

As part of this restorative process, Wollstonecraft also emphasizes the relational nature of giving testimony in Jemima’s narrative. In underscoring the significance of Maria and Darnford’s willingness to *listen*, she makes us recognize the value, and need for, a space in which victims can speak and *be heard*. First, she establishes the previous *lack* of space Jemima had to tell her story. Jemima explains, “I was the filching cat, the ravenous dog, the dumb brute, who must bear all; for if I endeavored to exculpate myself, *I was silenced, without any inquiries being made*” (56, my emphasis). Wollstonecraft underscores the neglect of disenfranchised victims in Jemima’s passage, but she further highlights the active suppression of their experiences. After she has become forcibly impregnated by her master and has nowhere to go, Jemima tells that “One of the boys of the shop passing by, heard my tale, and immediately repaired to my master...he touched the right key – *the scandal it would give rise to if I were to repeat my tale to every enquirer*” (58, my emphasis). Jemima’s explanation here reveals the reason for her suppression – to protect the reputation and social standing of her ruling class offender.

Wollstonecraft suggests how this silence is maintained at little cost when Jemima's master extends temporary and conciliatory help in order to prevent her from talking.

Wollstonecraft suggests that even those without self-interest in silencing marginalized victims, often times find momentary monetary charity less taxing than actually taking the time to acknowledge a victim. For example, later, when Jemima's more kindly master dies and leaves her nothing, she approaches one of his companions for help. But she says, "*without waiting to hear me*, he impatiently put a guinea into my hand" (63, my emphasis). When Jemima recounts how little this guinea actually fulfills her needs, Wollstonecraft implies that extended recognition – such as the receptive, socially aware, supportive community of Maria and Darnford – is a better long term solution than misguided reparation accompanied by no acknowledgment. Finally, when Jemima is hospitalized and subjugated to experimentation by medical doctors and students, she "thought of making [her] case known to the lady-like matron; but her forbidding countenance prevented [her]," plus, "the nurses knew the hour when the visits of ceremony would commence, and every thing was as it should be" (67). In Jemima's description of her caretakers, Wollstonecraft emphasizes how even in a facility of healing, the sort of help that might aid in a survivor's recovery – recognition and listening – is also not available.

Brison explains the consequences of these moves to silence an individual already struggling to establish autonomy post-trauma; she says that "A further obstacle confronting trauma survivors attempting to reconstruct coherent narratives is the difficulty of regaining one's voice, one's subjectivity, after one has been reduced to silence, to the status of an object" (47). Wollstonecraft suggests by means of Jemima's

silencing, that by denying victims the opportunity to testify to the harms perpetrated against them, social and judicial systems contribute to, and extend, their traumas. Modern victims' rights advocates refer to this frustration at being silenced or ignored by the system as "secondary victimization" (Dignan 23). Wollstonecraft depicts this secondary victimization when Jemima continues to be victimized by her community's and social institutions' suppression of her traumas.

Wollstonecraft's careful depiction of the way Jemima's story is silenced, and her traumas ignored, helps us to better understand her "misanthropy" and alienation at the novel's beginning. It also emphasizes why Maria's and Darnford's willingness to listen critically helps Jemima (re)gain a sense of self because, "how (and even whether) traumatic events are remembered depends on not only how they are initially experienced but also how (whether) they are perceived by others, directly or indirectly, and the extent to which others are able to listen emphatically to survivor's testimony" (Brison 42). Dismissal of Jemima's previous experiences makes her reluctant to trust any audience. She tells them in the midst of her confession "I will not attempt to give you an adequate idea of my situation, lest you, who probably have never been drenched with the dregs of misery, should think I exaggerate" (55) and "Not to trouble you...with a detailed description of all the painful feelings..." (65). Because no one acknowledged or perceived her traumas before, Jemima has trouble disclosing her experiences, even given a willing audience. In Jemima's initial mistrust and misanthropy, Wollstonecraft again underscores the far reaching consequences that the lack of space granted to victims can have for individuals and community.

Despite her reluctance to share her story, Maria and Darnford act as patient, open witnesses to her trauma. In their receptiveness, Wollstonecraft implies the value of bearing witness as a necessary element within a justice process that seeks to repair harm to a victim. Wollstonecraft allows the majority of the chapter to be controlled and told by Jemima, but at key points her audience interrupts – to comment, acknowledge her experiences, and then encourage her to continue, such as when Maria tells her “But pray go on” (65). Brison explains the value of being a witness to a victim’s trauma as we see it unfold in *Maria*: “In order to construct self-narratives we need not only the words with which to tell our stories, but also an audience able and willing to hear us and to understand our words as we intend them” (46). Maria and Darnford’s willingness to hear Jemima profoundly affects her attitude, behavior, and sense of self. At the conclusion of Jemima’s confession, the narrator intervenes to explain “Maria took her hand, and Jemima, more overcome by kindness than she had ever been by cruelty, hastened out of the room to conceal her emotions” (69). In Jemima’s reaction, Wollstonecraft suggests how the process of testifying and bearing witness can help victims to reintegrate and move toward recovery. Brison helps to explain what Wollstonecraft reveals in this moment of connection between Jemima, Maria, and Darnford; she says,

The act of bearing witness to the trauma facilitates [a] shift, not only by transforming traumatic memory into a coherent narrative that can then be integrated into the survivor’s sense of self and view of the world, but also by reintegrating the survivor into a community, reestablishing connection essential to selfhood...[providing] support for a view of the self as fundamentally relational – vulnerable enough to be undone by violence and yet resilient enough to be reconstructed with the help of others. (39-40)

We see this shift and reintegration in the way Jemima experiences a positive change in attitude, begins to trust Maria, and begins making decisions about her future.

Wollstonecraft also underscores the significance of the reciprocal healing process Jemima, Maria, and Darnford share. Both Maria and Danford disclose their experiences and traumas as well – with each other, with Maria’s disembodied daughter, and with the legal counsel at the novel’s end – still unwilling to bear witness. In their relational, restorative process, Wollstonecraft suggests the value of allowing victims the opportunity to testify to their trauma as a means to repair harms.

#### **VI. THE VALUE OF MAKING PUBLIC SPACE TO ACKNOWLEDGE PRIVATE ABUSES**

Wollstonecraft’s depiction of Jemima’s restorative process underscores that repairing harm cannot occur in solitude. Jemima’s testimony and the role of her witnesses reveal “the ways in which the self is formed in relation to others and sustained in a social context” (Brison 40). In order for an individual or a community suffering from trauma to heal and move forward, Wollstonecraft implies that the process must ideally be enacted in the company of others. She additionally suggests the significance of this shared space in Maria’s final unprecedented legal testimony. In Maria’s testimony, Wollstonecraft enacts the possibility she presents among Jemima, Darnford, and Maria within a formal setting, extending the vision to an open public forum. Given these community processes, Wollstonecraft’s representations in *Maria* seem to advocate for a public space in which to provide wider recognition of women’s and victim’s experiences – not only for the benefit of individuals, but also for the benefit of social and legal systems seeking justice.

As Godwin’s final trial had suggested, allowing both victim and accused to participate in justice processes may have benefits beyond fairness and equality. Allowing victims to disclose the trauma they have undergone as a result of a crime forces an offender to take direct responsibility for the suffering he has caused. This accountability

and recognition of responsibility may instigate more repair of harm, or reform of an offender, than solitary confinement or incarceration alone can accomplish. In his recent study *Restorative Justice, Self Interest and Responsible Citizenship* (2008), Lode Walgrave explains the sequence of emotions offenders may feel when confronted with victim testimony in an ideal restorative process:

...the victim tells his story of harm and suffering, fear and anger. In doing so, the victim shows the suffering to which he has been subjected...Most offenders, confronted with that, will be touched with compassion and begin to sense the invitation to apologise. It is an important transformation. The initial shame, focused on *one's own discomfort* under the regard of the other, will be completed by compassion, which is focused on the *discomfort of the other*...But it is not only compassion they will feel. They will recognize that their own behaviour has caused the suffering. (115, his emphasis)

Walgrave's description reminds us of Falkland's acknowledgment of his crimes and his recognition of the harms he caused Caleb at the end of Godwin's novel. Noticeably, Wollstonecraft does not depict this direct confrontation with victim and offender in her novel, though she does represent a relational restorative process.

One possible reason for this difference may be the cultural reality – by restricting representation of Jemima's testimony to a private setting, Wollstonecraft underscores the infrequency of victims actually appearing in court for crimes of rape or offenders being held accountable. Kathleen Daly, contemporary restorative justice scholar, explains that the sort of process Wollstonecraft depicts can still be reparative, even without the offender. She explains that "It is useful to keep in mind that restorative processes need not involve face-to-face meetings of victims and offenders...Restorative processes can also be used for victims alone, when for example, an offender can not be identified" (77). While Jemima's offender can be identified, Wollstonecraft's representation implies that

because of his gender and status, Jemima's offender would not need to be accountable; nevertheless, Wollstonecraft imagines a successful restorative process without him.

Another possibility for this more private setting may be closer to what contemporary restorative justice experts are finding, particularly concerning crimes of sexual violence. In cases of sexual violence, experts explain that maintaining a victim centered, restorative approach with a crime of such deeply entrenched power dynamics can be a challenge (van Wormer 113). To counter this challenge, practitioners have developed different models – some involving victim and offender, such as the victim-offender conferencing Walgrave refers to above – but others involve a closed setting closer to the restorative process Wollstonecraft depicts. Van Wormer explains that in this model, referred to as a healing circle, “people who are involved in some form of victimization are seated in a circle to provide personal support following the trauma caused by a crime of violence...communication and healing are the central focus” (110). In this practice, the victim need *not* confront the offender if that reality is too threatening or retraumatizing, but the process still allows the victim to benefit from recognition. It additionally still permits the community to become aware of private abuses.<sup>28</sup>

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<sup>28</sup> I need to acknowledge that even in contemporary justice practice, restorative paradigms involving sexual crime are still only very recently being attempted. Because of the sensitive and violent nature of the crime, Umbreit explains that such cases “require longer case preparation for all participants, with special attention paid to their expectations and feelings about the encounter; greater professional skills of facilitators; negotiation with correctional officials; and clarification of boundary issues” (qtd. in van Wormer 110). Additionally, as Daly cautions, such processes provide an *opportunity* for repairing harm, not necessarily its success, and practitioners “do not expect that participants will want to reconcile or that victims can ever forgive the offender or even that offenders will feel remorse for their actions” (83). Despite these greater complications and potential obstacles, however, research in the early stages of these models suggests that “the process was well received by both victims and offenders” (van Wormer 113). Rozee and Koss report the following advantages to the process: “strengthening community trust; empowerment of the victim-survivor; [and] release of legal authorities from pressure to take action under difficult circumstances [hard to obtain legal conviction]” (qtd. in van Wormer 112). These findings underscore the significance of Wollstonecraft's depiction, even centuries removed.

Although Jemima's process does not dramatize conferencing with her offender, as Godwin's model had, perhaps instead Wollstonecraft intends a portion of accountability to extend to her readers. By providing Jemima the space to narrate her experience, Wollstonecraft opens up a literary space to disclose a trauma otherwise likely denied to most women by the justice system. Certainly, within her audience Wollstonecraft hopes for Jemima's narrative of abuse to perform its own sort of "discomfort" and "regard of the other," as Walgrave describes it. Jemima's narrative calls on individual readers to reflect on their own responsibilities. If not in active mistreatment, then at the very least, it calls on her audience to reflect on their role within the social institutions they uphold and benefit from, which marginalize and ignore abuses practiced on working-class women like Jemima. Barbara Taylor reminds us that for Wollstonecraft,

The right minded-citizenness is the woman who, her natural sympathies elevated into universal benevolence, equates her personal interests with the general good. She is, in other words, a true patriot in the Jacobin sense, that is 'a citizen of the world' who, committed to universal justice and happiness, purveys this ideal to others...Duty wedded to right is Wollstonecraft's formula for all this...As rights-bearing citizens, women have duties to undertake, public services to render, a civic mission to perform. (219)

One of the duties Wollstonecraft's novel seems to be suggesting for all citizens, men and women alike, is recognition of disenfranchised individuals within their communities and awareness of the rampant abuses they may suffer at the hands of legal and social institutions. She highlights the significant demand – the duty – placed on individuals and communities when they are seeking justice which repairs harm.

Wollstonecraft reveals the need for listening to victims because Jemima's narrative exposes the traumas she experienced, but it exposes problems and injustices of the social and legal systems as well. Jemima's narrative discloses abuses of the justice

system, which instead of protecting and defending defies these principles; Jemima says, “You can scarcely conceive the tyranny exercised by these wretches considering themselves as the instruments of the very laws they violate” (60). She reveals private charity’s inadequacies by describing how the men who had formerly treated her as a companion overlooked her and refused her help when she approached them (63). She exposes the wrongs of workhouses, which are “but prisons, in which many respectable old people, worn out by immoderate labour, sink into the grave in sorrow, to which they are carried like dogs” (68). And she shows the shortcomings of a medical system that, rather than being “expressly endowed for the reception of the friendless,” conducts “experiments on the poor, for the benefit of the rich” (67). In describing these systemic problems, Jemima’s narrative reveals the need for a space in which to disclose private abuses because they also illuminate and demand the need for public reforms.

Wollstonecraft’s earlier writings perhaps reflect *why* she felt hearing about individuals’ stories first hand was an effective method to promote citizen reflection and action; the dialogic nature of the restorative process she represents is a major aspect of her philosophy on the most effective way to learn. For example, in her children’s text, *Original Stories From Real Life* (1787), she represents the pedagogical ideals undergirding restorative justice and the benefits of victim testimony. The work depicts two young people gaining understanding from “real life” – from the individuals they encounter who share their stories, including a prisoner, a harper, and a shopkeeper. Alan Richardson describes that “As in *Original Stories* and other didactic children’s books written in the wake of [Rousseau’s] *Emile*, hands-on learning, active problem solving, and ‘socratic’ dialogues are the preferred form of instruction” (36). We see

Wollstonecraft's application of this hands-on, active, dialogic method of understanding transferred to criminal justice paradigms when she depicts the value of allowing victims to testify and be heard. She implies that in this exchange understanding is gained; lessons about suffering and compassion may be learned. Further, in her *An Historical and Moral View of the French Revolution* (1794) she tells us that "From the social disposition of man, in proportion as he becomes civilized, he will mingle more and more with society. The first interest he takes in the business of his fellow-men is in that of his neighbor; next he contemplates the comfort, misery, and happiness of the nation to which he belongs..." (qtd in Sapiro 36). Maria and Jemima dramatize this process as they begin to take an interest in each other's welfare. Moreover, Wollstonecraft attempts to enact this interest in her readers: in giving us the experiences of one victim, she hopes to help us reflect on this victim's place within the larger community that oppresses her.

## VII. CONCLUSIONS

Although Wollstonecraft died before finishing *Maria*, she nevertheless leaves readers a rich text to appreciate, which contributes her own unique addition to the family's intertextual vision of justice – the need to listen to and incorporate victims. Nancy Johnson tells us that "By encoding the political principles and controversies in narrative events and characterizations, the English Jacobin authors were able to show the dire need for everyone (but especially the most vulnerable) to claim individual, inalienable rights because everyone requires protection against a government comprised of fallible systems of law" (17). Wollstonecraft's belief in individual rights, her desire for reform of "partial laws," and her recognition of the trauma women's stories help to expose and contain, collide in Jemima's testimony. In this collision, Wollstonecraft seems to anticipate and demand a public space for disclosing victim's stories – in order to

help individual and system alike. Susan Brison, trauma theorist and herself a victim of a murder attempt and sexual-assault, reinforces this demand; she describes,

...after my assault I experienced moments of reprieve from vivid and terrifying flashbacks when giving my account of what happened – to the police, doctors, a psychiatrist, a lawyer, and a prosecutor. Although others apologized for putting me through what seemed to them a retraumatizing ordeal, I responded that it was, even at that early stage, therapeutic to bear witness in the presence of others who heard and believed what I told them. Two and a half years later, when my assailant was brought to trial, I found it healing to give testimony in public and have it confirmed... (46)

Jemima's fictional narrative suggests to us the many actual victims of trauma who were never given the opportunity to tell their stories or have their experiences and identities confirmed. It underscores Wollstonecraft's commitment to rational *and* emotional methods of reform. And it reminds us of how important it is to continue advocating for victim participation in the justice process – to create a public space in which to tell private stories, for the benefit of both spheres. Robin West, contemporary legal scholar and supporter of “the relevance of storytelling (and story listening) to the larger project of changing law to make it a more just and humane social world” (10), describes that “by forcing into the public discourse descriptions of women's subjective, hedonic lives, the conception of the human being assumed by that discourse...might change so as to actually include women” (247). Remarkably, West's notion seems intimately aware of Wollstonecraft's strategy, which forced Jemima's narrative into the public space of the novel more than two hundred years ago. Furthermore, she also seems to anticipate modern criminal justice reforms and restorative justice ideals, which seek greater recognition of victims' experiences. If Wollstonecraft anticipates and reminds of us this need, as we will see in future chapters, her justice system does not respond in kind. Instead, as Percy Shelley shows us in his text, *The Cenci* (1819), the justice system would

require greater and more urgent reminders of the consequences that can result from denying victims the space to testify as legal and penal systems continued reforms in the early nineteenth century.

### Chapter Three

#### Monstrous Crimes and Offender Accountability in Mary Shelley from

#### *Frankenstein to Falkner*

Why should we listen to a “monster”?

Beginning in 1997, Pumla Godobo-Madikizela held a series of interviews with Eugene de Kock at Pretoria Central Prison. Godobo-Madikizela is a psychologist who served on the Human Rights Violations Committee during South Africa’s Truth and Reconciliation Commission (TRC). She grew up in a black township and, as a child, witnessed apartheid’s violence. De Kock is a former commanding officer who was responsible for state-sanctioned murders under the apartheid government. He is currently serving a 212-year sentence for these crimes against humanity. In her analysis of their interviews, *A Human Being Died That Night* (2004), Godobo-Madikizela articulates the conflict between holding de Kock accountable and moving toward forgiveness. She says:

Connecting on a human level with a monster...comes to be a profoundly frightening prospect, for ultimately, it forces us to confront the potential for evil within ourselves. Compassion toward and hence forgiveness of people who have left a gruesome trail in their wake in effect brings ‘innocent’ victims and wicked men together to share at a single common table of humanity, and that prospect is unpalatable. (123)

De Kock’s monstrosities are not the fabricated materials of fiction: they represent the horrific violence that human beings are capable of inflicting on one another. Yet Gobodo-Madikizela suggests the real-life possibility of practicing justice that, in attempting to repair harm, seeks restoration and compassion rather than merely revenge or retribution. She acknowledges, however, that it may be unpalatable or even obscene to many.

As I argued in my last two chapters, William Godwin and Mary Wollstonecraft constructed novels advocating for the model of justice Gobodo-Madikizela, now, two hundred years later, practices. Rooted in different cultural and historical contexts than Gobodo-Madikizela, Godwin's novel *Caleb Williams* and Wollstonecraft's novel *Maria* also offer visions of restorative justice. Published in the wake of the violence and democratic possibilities offered by the French Revolution, as well as amidst the legal and penal reforms taking place within the late eighteenth-century English criminal justice system, their novels acknowledge institutional disparities within the criminal justice system. They imagine inclusive, democratic processes that seek restorative outcomes in order to correct these disparities and repair harm. Their novels provoke this restorative possibility by allowing a falsely accused felon and a disenfranchised victim to narrate their experiences of social and judicial trauma. Through Caleb's and Jemima's testimonies, Godwin and Wollstonecraft alert readers to the value of giving voice within the criminal justice system to individuals who are marginalized and abused.

Twenty years removed from the publication of their novels, however, it is their daughter Mary Shelley who first asks readers to consider "connecting on a human level with a monster." Developing a more substantial focus on the offender—literally a monster in her first novel—Mary Shelley takes up and extends her parents' restorative justice ideals in *Frankenstein* (1818), as well as her last novel, *Falkner* (1837).<sup>29</sup> By drawing a connection between perpetrators of apartheid violence and Shelley's creature, I do not mean to equate the qualities of the two. Rather, I mean to show how Shelley advocates for a strategy of acknowledging and listening to individual stories, experiences,

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<sup>29</sup> I will be referring to Shelley's original 1818 edition of *Frankenstein*, rather than her revised 1831 version.

and motivations in order to recognize and better understand them. As I will elaborate, less than an attempt to dismiss or condone harms, such a strategy seeks to arrive at the root of such behavior, hold individuals accountable, and attempt to prevent future harm. Shelley's strategy is commensurate with the goals of South Africa's TRC and other advocates of Restorative Justice; however, as Krueger underscores, in a situation of transitional government, such a strategy is often a means by which marginalized groups attempt to deal "with their own victimization by powerful people imposing a pathological ideology" (private). I do not wish to dismiss this critical distinction: as indicated in my Introduction, I draw on events both past and present in an effort to show the historic and contemporary relevance of the Godwin-Wollstonecraft-Shelley family ideas about justice.

Shelley draws attention to justice and develops it in three ways from *Frankenstein* to *Falkner*. First, she continues to critique and comment on judicial processes and outcomes in both novels, although in her later novel her critique mellows considerably. Second, she recognizes the role of an offender and considers the balance between individual and systemic responsibility in the evolution of criminal behavior. Her emphasis on the role institutions play in contributing to a criminal's development shifts, and she focuses more on individual accountability. Third, she returns to and extends the possibilities of restorative processes; she conveys the obstacles standing in the way of restorative justice in *Frankenstein* and imagines potential solutions to these barriers in *Falkner*. The significance of recognizing an offender's experiences through testimony is underscored throughout both novels.

### VIII. SHELLEY'S HISTORICAL CONTEXTS AND INFLUENCES

Although my argument for Shelley's representation of restorative justice is based primarily on textual evidence, I would briefly like to consider her potential motivation and inspiration for writing about criminal justice in these two novels, while at the same time acknowledging the enormous scale of attempting to do so. The task is enormous since the period of their composition stretches over a wide swath of time, and, thus, encompasses an array of private and public changes. She began writing *Frankenstein* in 1816 and completed *Falkner* in 1837; during this more than twenty year period, the legal and penal reforms that began during her parents' era were expanding and passing into official legislation, the relatively recently popularized literary form of the novel was evolving and shifting to include "subgenres of the literature of crime" appealing to readers' tastes (Pykett 19), and Shelley was personally experiencing radical changes in her private life. Among these factors, which may have been most significant to Shelley's representation of justice in these novels?

For starters, culturally, the debates about legal and penal reform began during Godwin's and Wollstonecraft's era continued. In terms of criminal trial processes, scrutinized so closely in *Caleb Willaims*, John Beattie describes that "between 1821 and 1836, bills to grant accused felons the right to counsel were introduced on ten occasions" (250). Debates about the right to counsel finally culminated in the Prisoners' Counsel Act of 1836, which granted both the prosecution and the defense the right to an advocate during felony trials. This shift from the old "accused speaks" format to the new adversarial format, was helpful in granting representation and aid to the accused, particularly given the increased professionalization of the legal field. However, as my last chapter argues, this shift had other, less positive implications; professional legal

intervention moved individuals involved in the offense further and further from direct participation in their justice process. Godwin and Wollstonecraft's texts represent the value of allowing victim and accused to participate in criminal trials prior to this formal legal shift. As we shall see, Shelley's texts further explore the benefits and implications of direct testimony to a just criminal process.<sup>30</sup>

While Godwin and Wollstonecraft leave behind more evidence of active engagement with the earlier stages of these criminal justice reforms, Shelley's journals do indicate her interest in politics and that she occasionally attended Parliament. For example, Shelley's letter to Maria Gisborne notes that she "went to the House of Lords the other Night & heard the Debate on the Tithe Question" and that she was "very angry with [Lord Brougham – the Lord High Chancellor] for his speech on the poor laws" (*LMWS II* 212-213). Noting this interest, Betty Bennett describes her as "a sophisticated observer of the political scene...aware of the influence of politics in almost every aspect of her life" (*LMWS II* xix). Criminal justice reforms were numerous and certainly culturally pervasive during her lifetime. But Shelley seems to have been even more influenced by notions of justice alive in her parents' texts, than shaped by the particular criminal justice reforms of her own era. Julia Saunders agrees that, "It was the ideas of the radicals of the past, rather than those of her own era, that formed her intellectual milieu. By the time she wrote *Falkner*, the radical agenda of her parents' generation had become muted and

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<sup>30</sup> Other notable changes in criminal justice reform include Robert Peel's "abolition of capital punishment for some minor offenses and his consolidation of the criminal law into four major statutes between 1827 and 1830" (Beattie 257). Peel also established the Metropolitan Police Office in 1829; formally creating one of the first modern police forces. Additionally the Prison Act in 1835 "established inspectors of prisons on the model of factory inspectorate" (Pykett 22). Concerning these reforms, Godwin's texts show the most awareness and engagement with the issue of improving penal conditions and practices. In *Falkner*, Shelley treats prison conditions both more briefly and favorably than Godwin, as I will later address. Interestingly and anecdotally, it should also be noted that despite his conservative reputation at the time, Shelley felt very warmly toward Peel since he helped maintain government compensation to her father, after the Whigs had tried to revoke it (*LMWS* 223).

mutated in the work of the daughter, but its presence is still felt in both form and content” (211). We can glean the radical agenda that shaped Shelley’s notions of justice by considering those texts written by her parents.

Shelley’s reading list and journal make obvious that she was deeply influenced by all of her parents’ texts. In the two years leading up the writing of *Frankenstein*, Shelley’s journal documents repeatedly consulting the works of social and criminal justice that my project is concerned with: she notes reading Godwin’s *Political Justice*, *Caleb Williams*, and *Cursory Strictures on the charge delivered by Lord Chief Justice Eyre* as well as Wollstonecraft’s *Maria: Or the Wrongs of Woman* and *A Vindication of the Rights of Women* repeatedly from 1814 to 1822 (JMS 649,684). These works would have provided the early foundation of her ideas about justice, alerted her to the structural and systemic abuses within legal and penal institutions, and conveyed to her the restorative value of allowing victim and accused to participate in the justice process.

In addition to this devotion to her parents’ texts in her early writing development, Shelley’s later interest in Godwin’s criminal justice texts may have contributed to her representation of justice in *Falkner*. For example, Graham Allen argues that while Shelley was composing the novel, she reread and wrote about Godwin’s contribution to the 1790s treason trials. Graham explains that Shelley studied these texts as she prepared to write the “Life of William Godwin” following her father’s death in 1837. He says that

Shelley spends a considerable amount of time in 606 [Shelley’s manuscript of her memoir of Godwin] dealing with the treason trials of 1793 and 1794 in which the defendants were placed on capital charges for what were, at the very worst, no more than acts of seditious libel. She describes the build-up to these trials in great detail, and transcribes liberally from Godwin’s correspondence and particularly from his *Cursory Strictures on the Charge Delivered by Lord Chief Justice Eyre*. (“Public and Private” 230)

Shelley's attention to these trials as well as Godwin's political tract would have contributed to her understanding of the legal process. It would have revealed to her Godwin's critique of the way positive law and legal procedures could be manipulated by those in power. It also would have demonstrated his engagement in civic debate about matters of justice, and, finally, it would have also underscored his belief in the power of defendant participation and testimony.<sup>31</sup>

Beyond the potential influence of this political tract on Shelley's notion of justice, other scholars have commented on the possible inspiration which Godwin's last novel, *Deloraine* (1833), may have provided. *Deloraine's* plot, similar to that of *Falkland*, involves a man pursued for the crime of murder. Deloraine flees with his daughter to the continent, never admitting to the offense or being tried in a legal setting.<sup>32</sup> Noting the novels' shared storylines, Pamela Clemit suggests that *Falkland* proves: "their relationship developed into a creative partnership, based on reformist beliefs" (286). While the protagonist does not take responsibility for his crime in Godwin's novel, whereas the criminal admits his guilt and is legally tried in Shelley's, both novelists clearly continue to be engaged in themes of offender accountability and criminal justice.

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<sup>31</sup> See Godwin's letter to Joseph Gerrald in Chapter 1, in which Godwin emphasizes the power of testimony, for a further example of this idea. Godwin visited Gerrald in prison and encouraged him to speak passionately of his experiences to his jury. Hindle tells us that Mary Shelley says Godwin "always spoke of Gerrald with affectionate admiration" and she describes that "To render his advice more impressive, he wrote to him" (qtd in Hindle 355).

<sup>32</sup> I am indebted to Pamela Clemit ("Political Partnership"), Graham Allen (*Mary Shelley*), and Katherine Hill-Miller ("*My Hideous Progeny*") for this summary of Godwin's novel.

<sup>33</sup> Clemit argues that by this stage in Shelley's writing the influence was reciprocal. She says that "the traffic of ideas in these novels is by no means all one-way: Godwin also drew on information supplied by Shelley" (289). Among evidence of shared ideas, Clemit cites Godwin's letter to Shelley on 13 April 1832, when he describes his stalled writing and asks for a "single spark, now happily communicated" to "set the whole in motion and activity" (289). Hindle supports this reciprocal influence (*Deloraine* "Intro" vi).

Writing a novel that depicted criminal perpetrators during the 1830s was not unique to Godwin and Shelley. Aside from the criminal justice reforms and the influence of her parents' texts, Shelley's depiction of justice may have also been a response to popular trends in reading taste, particularly when she composed *Falkner*. Lynn Pykett explains that "The Newgate novel" was a "sub-[genre] of the literature of crime, which enjoyed a relatively brief but quite extraordinary popular success in the 1830s and 1840s" (19). She characterizes the conventions of these crime novels as typically representing criminal protagonists, oftentimes "focusing on their motivation or psychology... representing them as the victims of circumstance of society" (20). Shelley would have been acquainted with these types of novels since *Caleb Williams* is often cited as one of the genre's originators (Pykett 19, Tyson 3). Further, Edward Bulwer was one of the superstars of the genre and was her father's friend and admirer. According to Nancy Jane Tyson, Bulwer had also named his first novel *Falkland* (1827) to signal Godwin's influence and he had acknowledged Godwin's inspiration on his immensely popular *Eugene Aram* (1832).<sup>34</sup> Shelley's letters and journal indicate she read Bulwer's first Newgate novel *Paul Clifford* in 1830 (*JMS* 660), as well as *Eugene Aram* in 1831 (*LMWS II* 151). She tells John Bowring that *Eugene Aram* "is a wonderful and divine book – though so very sad" (*LMWS II* 155). Her letter to Maria Gisborne, just prior to beginning *Falkner*, mentions again that she "admired his novels so much" (*LMSW II* 261). The Newgate Crime novels, with their focus on generating sympathy for criminals, therefore, also potentially shaped her representation of justice, crime, and reconciliation.

Despite the abundance of scholarship written about Mary Shelley's novels, no

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<sup>34</sup> Pykett describes how Bulwer's novels evolved from the Godwinian move of challenging "readers' assumptions about the nature and causes of crime and their prescriptions for punishment" in *Paul Clifford* (1830) to depicting a man who justifies his crime as reasonable in *Eugene Aram* (22-25).

critical work has been done that follows the representation of restorative justice from *Frankenstein* to *Falkner* or traces the evolution of Godwin's and Wollstonecraft's notion of justice in Shelley's works.<sup>35</sup> Jonathan Grossman explains that "Mary Shelley's *Frankenstein*, so well known as both gothic and science fiction, has never registered as a particularly legal story" (62). Among the critics who have looked at issues of legality or justice in the work is Patrick Vincent, who focuses on Rousseau's birthplace as the novel's geographical setting in "'This Wretched Mockery of Justice': Mary Shelley's *Frankenstein* and Geneva" (2007). He suggests that this setting allows Shelley to depict her disappointment with the "mockery of justice" and arbitrary rule of law practiced in Geneva because she depicts a much more codified, succinct justice process via the novel's trial of Victor in England. Rather than suggesting a positive depiction, however, my argument seeks to prove that Shelley depicts Victor's trial as representative of a biased and unbalanced administration of justice when compared with the novel's other legal trial. Grossman also devotes a chapter to justice in *Frankenstein* in his larger work *The Art of Alibi: English Law Courts and the Novel* (2002). Grossman's chapter notes

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<sup>35</sup> *Frankenstein* has been analyzed from Reader-Response, Psychoanalytic, Feminist, Marxist, and Cultural studies perspectives. For articles that document an overview of its critical tradition see Diane Hoeveler's "Frankenstein, feminism, and literary theory" and Lawrence Lipking's "Frankenstein, the True Story." *Falkner* has only more recently been critically assessed. Among these assessments, the vast majority have dealt with the father-daughter relationship, whether thematically or psychoanalytically (see Ranita Chatterjee, "Filial Ties: Godwin's *Deloraine* and Mary Shelley's Writings"; Anne K. Mellor, *Mary Shelley: Her Life, Her Fiction, Her Monsters*; Mary Poovey, "Fathers and Daughters: The Trauma of Growing up Female."; Katherine C Hill-Miller, *My Hideous Progeny: Mary Shelley, William Godwin, and the Father-Daughter Relationship*. For the novel's treatment of mother-daughter themes, see Lisa Hopkins, "'A Medea, in more senses than the more obvious one': Motherhood in Mary Shelley's *Lodore* and *Falkner*." and Sharon L. Jowell, "Mary Shelley's Mothers: The Weak, The Absent, and The Silent in *Lodore* and *Falkner*."

the influence of Godwin and Wollstonecraft, but focuses more heavily on the way Shelley's personal interaction with the law may have shaped her novel.<sup>36</sup>

For my purposes, the theme of justice in *Frankenstein* has been examined most usefully in three studies. The first is Colene Bentley's "Family, Humanity, Polity: Theorizing the Basis and Boundaries of Political Community in *Frankenstein*" (2005). Bentley's article is valuable in examining Victor and the creature's episode on Montanvert and arguing that "Shelley suggests that societies need to consider themselves from the perspective outside their closed purviews in order to reflect on matters of identity and justice" (347). Bentley argues that *Frankenstein* promotes extending the notion of community in order to achieve justice, an analysis that is helpful to my understanding of Shelley's vision. Despite this consensus, I disagree with her claim that Shelley goes *against* Wollstonecraft in arguing for diminished or distanced fellow feeling in order to achieve justice. Rather, I agree more with Jeanne M. Britton and David Marshall who offer two readings that consider fellow feeling in *Frankenstein* from a context of deeper recognition with another; unlike Bentley, they consider fellow feeling and its relation to justice in the context of early nineteenth-century conceptions of sympathy. In this vision of fellow feeling, justice is achieved by seeking to transcend barriers to perception or understanding.

In "Novelistic Sympathy in Mary Shelley's *Frankenstein*" (2009), Britton reads the novel through Adam Smith's theory of sympathy.<sup>37</sup> Britton argues that Shelley

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<sup>36</sup> Grossman notes that Mary was writing the novel during the custody proceedings for Percy Bysshe Shelley's children and says that the "novel amplifies an ideological, novelistic conception of modern subjects as necessarily – even in their affective and familial bonds – subject to and produced by the law courts" (81). Grossman's study is largely concerned with how the changing nineteenth-century legal culture – shifting from gallows to trial – motivated a shift in how novels defined themselves thematically and formally (6).

sought to overcome visual and auditory barriers to sympathy by dramatizing the possibility of achieving it through “third-person summary” (22). She says that Shelley hoped to show that novels, in their third-person form, could allow readers the best means to experience sympathy for another. My argument is more invested in thinking about how Shelley imagines realizing justice within the criminal system, and how this vision extends and develops her parents’ conception of restorative processes; however, Britton helps to identify Shelley’s concern with the best method to achieve recognition of another’s experience, which is a central component of the restorative justice process.

Marshall’s consideration of fellow feeling in *Frankenstein* is part of his larger study of *The Surprising Effects of Sympathy* (1998) in late eighteenth- and early nineteenth-century texts. Like Britton, he reads the novel through Smith’s theory of sympathy, but places more emphasis on Rousseau’s influence. Moreover, Marshall’s claim, that “Mary Shelley is working through Godwin’s and Wollstonecraft’s inquiries into the effects of the failure of sympathy and the recognition of others as fellow creatures with fellow feelings that sympathy seems to depend on” is most helpful to my consideration of restorative justice in *Frankenstein* (202). I will build upon and extend his analysis of Shelley’s representation of fellow feeling as it was influenced by her parents and demonstrate how it is critical to their vision of the justice process.

As noted earlier, critical considerations of *Falkner* have been more limited. None have considered Shelley’s extension of criminal justice from Godwin and Wollstonecraft through *Frankenstein* and *Falkner*. Despite this dearth, four studies that consider the political implications of *Falkner* help to inform my argument. Betty Bennett’s “Mary

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<sup>37</sup> She draws on Smith’s *Theory of Moral Sentiments* (1759) “which defines sympathy as an abstract system of shifts in perspective juxtaposed with sensory, embodied response....the stages of a process by which one person comes to experience the suffering of another” (3,8).

Shelley's Reversioning of Elizabeth, from *Frankenstein* to *Falkner*" (2000) focuses mainly on the evolution of the persona of Elizabeth, but she also briefly points out Shelley's desire for reform of the justice system and the ideal of forgiveness as central to this reform. Julia Saunders' "Rehabilitating the Family in Mary Shelley's *Falkner*" (2000) argues that Mary Shelley's last novels maintain the reform agenda of her parents' generation, but do so less radically via reform of the individual and the family. I hope to build on her claim that despite this less radical stance, Shelley's last novel does advocate for change. Neither of Graham Allen's "Public and Private Fidelity: Mary Shelley's 'Life of William Godwin' and *Falkner*" (2000) nor "*Falkner, a novel*" (2008), look specifically at justice, but both provide helpful readings of Shelley through Godwin's influence.

Finally, I wish to build upon Melissa Sites' convincing argument in "Utopian Domesticity as Social Reform in Mary Shelley's *Falkner*" (2004). Sites argues that Shelley complicates essentialist gender readings in the novel; she calls attention to the way that Shelley ascribes traditionally feminine and masculine virtues to both male and female characters. As part of this advocacy of feminine qualities, she claims that Shelley extends Godwin's vision of justice in *Caleb Williams* by inserting the character of Elizabeth to carry forth an ethics of "domestic utopia." This ethic shares similar traits to those of restorative justice, as I hope to show, by promoting ideals of sympathy, compassion, and disinterested duty regardless of blood relations. I will consider how Shelley suggests that victim, offender, and community can benefit from these ideals within the criminal justice system.

## **IX. REPRESENTATIONS OF THE JUSTICE SYSTEM IN *FRANKENSTEIN***

In order to show that in *Frankenstein* Shelley follows her parents by critiquing inequities against disenfranchised individuals in the justice system, I will begin by examining the coerced confession and wrongful conviction of Justice Morowitz. As family servant to the Frankenstein family, Justine shares the underprivileged position represented by other wrongfully accused or unrepresented individuals within the family's repertoire. As is the case with Caleb, Emily, the Hawkins, Maria, and Jemima, this position makes her vulnerable to abuses within the justice system. In Justine's case, Shelley represents inequities practiced against disenfranchised individuals in the justice system in three ways: manipulation of circumstantial evidence, misuse of the accused's reaction to condemn or absolve, and coercion of confession. In pointing out these inequities, Shelley anticipates arguments in favor of granting legal protection to the accused. Because I believe the family deemed direct participation by victim and accused to be of critical value to achieving justice, I am not suggesting that Shelley sought to replace this participation with legal intervention. I am hoping to show that, at the very least, Shelley draws attention to the problems and power dynamics confronting marginalized individuals' testimony in criminal trials. Many of these problems would also become concerns highlighted by nineteenth-century proponents of legal rights.<sup>38</sup>

Shelley's first criticism of the justice process deals with the arbitrary use of material evidence. Justine is first charged based on material evidence that makes her appear guilty of killing William, Victor's younger brother. Like the Hawkins' storyline

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<sup>38</sup> Beattie states that "The notion that the accused had rights that should be safeguarded emerged perhaps under the twin stimulation of the day-to-day work of defense lawyers, and the wider English debate about crime, the criminal law, prosecution procedures, and punishment that emerged in the late eighteenth and early nineteenth centuries" (248). Beattie notes that among the rights proposed during the Prison Counsel Act debates was "a form of legal aid: that defendants who could not afford counsel would be provided one...[but that] That was too astonishing of an act to survive the final act" (251).

in *Caleb Williams*, Shelley's episode demonstrates that logical details and "proof" can be used to convict a disenfranchised defendant, but that both can be *created* in order to construct false narratives. As we have seen, in Godwin's version, the father and son are wrongly convicted of Tyrell's murder, which wealthy and respected Falkland actually commits. They are convicted based on the certainty of "accumulated evidence" against them, including clothes, a knife handle, and the alleged sighting of the men on the night of the murder.

In Shelley's version, a similar result occurs in the case of Justine's framing. The creature describes the way he composes the false narrative: "I perceived a woman passing near me...I approached her unperceived, and placed the portrait securely in one of the folds of her dress" (97). The creature's "mischief" produces evidence that Justine's judges, and even Victor's family, believes. Victor's brother describes the first reason people suppose Justine committed the crime: "several circumstances came out, that have almost forced conviction upon us" (50). Like the spectators of the Hawkins' set-up who are swayed by the material evidence against them, people are willing to believe Justine murdered William because she's found with the miniature of Victor's mother. Beth Newman offers the following explanation: "the evidence that links Justine to the murder is circumstantial, which means that it assumes a narrative form: a series of apparently related events is distributed into a pattern of cause and effect, and so into a single, coherent plot; this plot being narratable, is plausible, and being plausible begins to seem true" (173). Just as with the Hawkins', Justine's guilt is practically confirmed because the story makes sense and, according to some, the evidence incriminating her is both "glaring" and "decisive" (55).

In Justine's and the Hawkins's wrongly presumed guilt, Godwin and Shelley reflect the "conflicting views of the criminal trial that had been emerging over the past half century" (Beattie 252). These conflicting views stemmed from a growing skepticism toward trial practice that used the plausible ordering of a narrative's events supported by "proof" to determine the truth of a crime.<sup>39</sup> Shelley's and Godwin's depiction of this method's failure anticipates the arguments laid out in the legislative debates of the 1820s and 30s regarding legal advocacy, whose proponents argued that "the 'facts' of a case arose from circumstantial evidence [and] [i]n setting out this evidence, prosecuting counsel inevitably drew inferences from it and...proved the guilt of the accused" (Beattie 255). Godwin's representation of the Hawkins and Shelley's representation of Justine indicate that they were aware of the manner in which testimony could be manipulated, putting unprotected defendants at a disadvantage.<sup>40</sup>

Aside from the system's manipulation of circumstantial evidence, Shelley suggests that determining guilt based on the defendant's behavior following an accusation can also be a problematic, and potentially abusive, method for arriving at conviction. Disproving the theory that an individual's honest reaction could help prove her innocent of the crime, Shelley emphasizes how Justine's accusers use her sincere surprise as a reason to condemn her. Earnest tells Victor that, aside from the picture, "her own behavior has been so confused, as to add to the evidence of facts a weight that, I

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<sup>39</sup> As mentioned previously, for extended studies of circumstantial evidence and direct testimony in eighteenth- and nineteenth-century literature see Alexander Welsh, *Strong Representations* (1992), and Jan Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Technology* (2000).

<sup>40</sup> As noted in Chapter One, while Alexander Welsh's *Strong Representations* (1992) argues that literary texts, like Fielding's *Tom Jones*, favored circumstantial evidence as being more accurate and certain ("the evidence that holds up in *Tom Jones* is nearly all indirect and the evidence that misleads is mostly direct" 57), Godwin's and Shelley's main point seems to be that both direct *and* indirect testimony are subject to manipulation given the status of those on trial.

fear, leaves no hope for doubt” and, again, “the poor girl confirmed the suspicion in a great measure, by her extreme confusion of manner” (50). Justine’s authentic astonishment fuels suspicion and her simple, unrehearsed defense – “I rest my innocence on a plain and simple explanation of the facts which have been adduced against me; and I hope the character I have always borne will incline my judges to a favourable interpretation” – does nothing to exonerate her (53). Shelley suggests conviction or acquittal depend more on the class status of a defendant than the legitimacy of her reaction; Justine’s honest response to the evidence against her is futile in exonerating her within an inequitable system seeking retribution.

By proving the “simple and innocent” defense theory false, Shelley again anticipates the legal rights debate. Opponents of legal advocacy used the “simple and innocent” theory to fuel the belief that no legal protection was necessary. Beattie explains that dating back to the early eighteenth century, individuals opposed to legal protection argued that “the innocence or guilt of accused felons was made abundantly clear by their natural responses to evidence as they heard it for the first time” (223).<sup>41</sup> Shelley counters this belief by showing that the theory fails; Justine is innocent and she reacts sincerely – nevertheless, her reaction is used against her.

Shelley underscores the inequity and arbitrary nature of the system later in the novel when the accusation against Victor comes to a completely different conclusion than Justine’s. Like Justine, Victor is innocent of Clerval’s murder; nevertheless, the circumstances against him are similar. Witness testimony and material evidence against him is substantial. He is found the morning after the murder with no alibi. A half dozen

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<sup>41</sup> Beattie refers to William Hawkins *A Treatise of the Pleas of the Crown* (1716-21). Langbein also notes that “Into the eighteenth century it was confidently asserted that...If falsely charged, the accused would clear himself through ‘the Simplicity and Innocence’ of his responses” (3).

men come forward as witnesses against him, including one who places him and his boat at the scene of the crime (121). Like Justine, Victor's reaction is closely monitored for signs of his guilt; his response to the accusation and evidence appears criminal to anyone with "common sense." For example, when he first sees Clerval's body, he actually appears to confess to the crime; draping himself over the corpse he says, "Have my murderous machinations deprived you also, my dearest Henry, of life? Two have I already destroyed; other victims await their destiny" (122). In what appears to be a guilty stupor, he calls himself "the murderer of William, Justine, and of Clerval" (122). Despite all of these elements working against him, Victor is exonerated based on "its being proved that [he] was on the Orkeny Islands at the hour" of the murder – an interesting piece of evidence since he was alone, dismembering the body of the female creature in secret, at the time of the crime (126). Shelley hints at an equal pretrial detention since Victor is incarcerated for three months prior to the assizes, but even in this regard she indicates that he seems to be favored. The magistrate secures for him "the best room in the prison," writes to Victor's father for his support, and assures him that, despite everything against him "doubtless, evidence can easily be brought to free you from the criminal charge" (124). In this blatant display of double standards, Shelley emphasizes the disparities of the justice system based on a defendant's gender and class. She echoes Godwin's depiction of Falkner's effortless exoneration for murdering Tyrell, and she builds on Wollstonecraft's critique of legal disadvantages practiced against Maria and Jemima.

While Shelley shows skepticism towards legal procedures that can be manipulated in order to convict a vulnerable defendant, she goes further than Godwin in representing

how a justice system that demands closure can contribute to coercing confessions for the sake of certainty. Shelley suggests the appeal of confessions when an official of the court tells Victor that Justine had confessed and he is “glad of it” because “none of our judges like to condemn a criminal upon circumstantial evidence, be it ever so decisive” (55). Shelley implies that the system seeks a confession, beyond material evidence, because it assures legitimacy and authority. However, she also suggests that the desire for this legitimacy leads to abuse; in order to obtain the finality and authenticity her confession provides their system, Justine tells Elizabeth officials “crush[ed],” “besieged,” “threatened,” and “menaced her,” until she gave in (56). The coercion of Justine’s confession underscores the power relations that threaten truth and equity in the criminal justice system.

Beyond these critiques, Shelley draws attention to the disturbing ways in which individual motivations can influence testimony; she shows how Justine makes a false confession not only because she is coerced, but also out of a desire to be loved, accepted, and forgiven. For example, Justine explains to Elizabeth why she professes her guilt: “I confessed, that I might obtain absolution...I almost began to think that I was the monster that he said I was” (56). Justine’s statements here reveal, first, that she confesses due to her desire for absolution – to be forgiven. Her following statement that she, herself, has been temporarily convinced of the false narrative and now fears she may be perceived as a monster, hints at her second motivation. She next tells Elizabeth, “He threatened excommunication and hell fire in my last moments...I had none to support me; all looked on me as a wretch doomed to ignominy and perdition” (56). Justine confesses not only for religious absolution, but because she fears dying as an outcast, abhorrent, or a

“monster.” Her desire to be accepted and loved by “all,” contributes to her false confession.

Peter Brooks describes the way these motivations can impact admissions of guilt: “confession as a plea for love redirects us to the status and nature of the truth involved in confessions – not only those that are compelled by interrogation or required by religious belief but those that are apparently freely offered” (46). Compelled to confess in her desperation to be loved and accepted, Justine is momentarily willing to confess to anything. As a result, she makes a confession that is a plea for approval, rather than a statement of truth. By depicting the complicated motivations behind Justine’s act, Shelley casts serious doubt about this act’s ability to guarantee truth in a trial setting. She asks us to be mindful of the power dynamics surrounding a confession’s transmission and consider the motivation and vulnerability of the confessant. In particular, she cautions against using confessions to acquit or condemn – especially if conviction is followed by high stakes retributive consequences like Justine’s execution.

#### **X. RECOGNIZING THE OFFENDER IN *FRANKENSTEIN***

Yet if Shelley casts doubt about testimony’s ability to guarantee truth – particularly when it’s linked to retributive outcomes – she does not dismiss testimony’s value outright. By including the victim’s (Victor’s) and the offender’s (the creature’s) first-person testimony, Shelley’s narrative form underscores her parents’ belief in restorative justice in three ways. First, by encompassing the narratives of Walton, Victor, and the creature, the novel’s frame structure attempts to achieve the restorative possibility of involving victim, accused, and even community (Walton) in the justice process. Second, despite acknowledging this value, her form dramatizes the limited space available for testimony of disenfranchised individuals. She highlights the depravity of the

creature's marginalization by positioning his account within the frame of both Victor's and Walton's narratives; her form reproduces the way the creature's disenfranchised voice is subsumed by those with more social status. She further underscores the limits of institutional space afforded to marginalized individuals in the same way that Wollstonecraft does in *Maria*. Just as Wollstonecraft depicts these limits by relegating Jemima's testimony to the private tribunal of Maria and Darnford, Shelley depicts the creature's only opportunity to be heard within an informal setting composed of a single witness. As her parents do, Shelley tries to compensate for these limits by giving the creature space to speak; just as Godwin allows Caleb first-person ownership of his experiences, and Wollstonecraft permits Jemima to narrate, Shelley, too, grants the creature his own voice in Volume II. Third, and perhaps most importantly, Shelley's narrative form also follows and extends values espoused by her parents' notion of the justice process because she highlights the significance of the offender's account. Whereas *Caleb Williams* gives voice to a falsely accused individual, and *Maria* gives voice to a victim, *Frankenstein* gives voice to a perpetrator.

The testimonies of each marginalized individual in the family's repertoire suggest different reasons for greater inclusion. Godwin shows through Caleb's testimony that silencing the disenfranchised within the criminal justice system limits the community from full knowledge of events and leads to inequities. Wollstonecraft shows through Jemima's testimony that this silence prevents certain crimes from ever being acknowledged at all. In *Frankenstein*, Shelley emphasizes through the creature's testimony that silence can reduce the community's ability to understand and remedy what factors lead to crime. Percy Shelley's review of the novel, published posthumously,

articulates this evolution of crime: “Treat a person ill, and he will become wicked...divide him, a social being, from society, and you impose on him the irresistible obligations – malevolence and selfishness” (186). The creature’s testimony exposes institutional and parental factors that may lead to criminal behavior.

When the monster narrates the chronology of his abandonment by Victor and his abhorrence by the community – he is not only rejected and ridiculed, but actually shot at – his testimony identifies his transition from benevolent creature, to victim, to criminal. Godobo-Madikezela explains one position regarding the nature and evolution of violence, which is similar to that which unfolds in the novel; she says,

certain individuals are predisposed toward becoming evil as a result of early childhood experiences of violence that made them suffer shame and humiliation, leaving them with unresolved anger. According to this view, the dynamics of evil that evolve from childhood psychological history often explain the roots of revenge, where anger and hatred resulting from the trauma suffered in the past are carried inside until the feelings of aggression can be enacted toward another in what becomes the individual’s moment to reclaim the ‘honor’ lost during the shaming experience. (55)

The creature’s abandonment by Victor and his mistreatment by every community member he confronts lead to his harmful acts. Anne Mellor points to the scene of the creature’s first murder as a depiction of the “abused child” paradigm (11), and certainly, the creature’s shame in his repulsed attempt to gain affection ultimately explodes in his first heinous act.

Shelley suggests that understanding what leads to criminal behavior is a benefit of making space for defendant testimony, but she also suggests that it may be the very absence of this space that further contributes to criminal behavior. For example, Katherine Hill-Miller points us to the moment in which the creature is denied a witness as the moment in which he determines to seek revenge. Referring to the moment when De

Lacy terminates his dialogue with the creature, she explains: “De Lacey’s refusal to provide the creature human sympathy touches off the chain of violence and vengeance that eventually destroys both the ‘monster’ and the original rejecting father, Frankenstein himself” (72). While Hill-Miller’s argument concentrates primarily on the issue of the father, I would argue that De Lacey’s refusal also represents the refusal of the community to listen to, and recognize, the creature. This refusal echoes the invisibility and silencing that both Caleb and Jemima experience as marginalized individuals, but here Shelley emphasizes the destructive consequences this silencing can have for one already criminally disposed.

After the creature tells De Lacey that he was afraid he wouldn’t hear his story, De Lacey says “Heaven forbid! even if you were really criminal; for that can only drive you to desperation, and not instigate you to virtue ”(91). Shelley returns to her parents’ belief in the critical significance of making space to listen to, and thereby recognize, individuals who are marginalized and disenfranchised from criminal and social systems. Testimony by perpetrators can help identify causes contributing to their crimes, but it can also help to prevent them in the future. It isn’t only in this instance, before the monster’s first offense, that he is refused; again and again, even after he commits murder, his community refuses to hear him. This refusal leads to greater and greater consequences for individual and community.

#### **XI. POSSIBILITIES AND FAILURES OF RESTORATIVE JUSTICE IN *FRANKENSTEIN***

Although Shelley underscores the devastating effects of marginalizing and silencing an individual already potentially vulnerable to committing criminal acts, her novel also suggests ways to reduce crime, repair harm, and reconcile victim and criminal. She signals the possibility of restorative justice in two ways. First, early in the novel, she

depicts a reparative, engaged model of criminal reform reflective of her parents' version of justice. The creature tells Victor that he steals from the De Lacey family for subsistence in order to survive initially. However, when he witnesses the harm his actions cause the family, and their kindness towards each other, he stops. He explains that, "They often, I believe, suffered the pangs of hunger very poignantly, especially the two younger cottagers; for several times they placed food before the old man, when they reserved none for themselves. This trait of kindness moved me sensibly...when I found that in [stealing] I inflicted pain on the cottagers, I abstained" (74). By changing his behavior because he understands the suffering it causes, rather than because he is punished or forced to do so, the creature reflects the non-retributive, non-coercive values of Godwin's vision. By gaining this understanding in a hands-on, experiential manner, rather than learning by discipline or fear, the creature reflects the pedagogical method favored in Wollstonecraft's vision.

In the creature's reform, Shelley adds the additional, restorative aspect of reparation to her parents' vision. Not only does the creature stop committing the crime, and gain an understanding of its harms, he begins to actually help them and contribute to their community; he explains how after he gathers firewood for the family "I observed, with pleasure, that he did not go to the forest that day, but spent it in repairing the cottage, and cultivating the garden" (74). When the creature recognizes the suffering his crimes have caused, he tries to make up for it by giving back and seeking to mend it. His new behavior actually adds to the well-being of the community. But if Shelley borrows and builds on the restorative ideals of her parents in depicting the way the creature repairs his harms, she also shows the repercussions of not creating conditions for this system.

Later, when the family marginalizes and repels the creature, he not only returns to criminal behavior but his crimes become infinitely worse.

Second, in the creature's confrontation with Victor at Monteverde, Shelley gestures toward the sort of restorative justice process her father had imagined: victim and offender engage in dialogue about the wrong committed in order to understand its effect and seek to repair its resulting harm. The creature's repeated pleas to be heard accentuate this critical step in achieving recognition and justice. He tells Victor, "I entreat you to hear me" (66) and "Listen to my tale: when you have heard that, abandon or commiserate me, as you shall judge what I deserve. But hear me. The guilty are allowed, by human laws, bloody as they may be, to speak in their own defense before they are condemned. Listen to me, Frankenstein...listen to me" (67). Though both Jemima and Caleb express this same need to be heard, this plea by the disenfranchised takes on greater urgency and it is attached to greater consequences in Shelley's novel; when the creature is not heard, he acts out with radical violence against innocent individuals. Victor, at first, considers him with anger and vengeance, denying him this dignity and articulating the very problem that seems to have been an impetus for the creature's crimes in the first place. He tells the creature, "I will not hear you. There can be no community between you and me" (66). But Shelley underscores the testimonial aspect of restorative justice again, when the creature repeats: "Still thou canst listen to me...I demand this from you. Hear my tale; it is long and strange" (67).

When Victor explains his rationale for finally bearing witness to the creature's story, he reflects many of the reasons participants in contemporary restorative justice processes consent. He explains: "[I] determined at least to listen to his tale. I was partly

urged by curiosity, and compassion confirmed my resolution. I had hitherto supposed him to be the murderer of my brother, and I eagerly sought a confirmation or denial of his opinion...I thought I might render him happy before I complained of his wickedness” (67). While many contemporary victims consent to the process because they feel removed from their perpetrator and frustrated by their alienation within current justice processes, the fundamental motivations are similar. The shared motivations support the need to create a space for such a process if possible – the need to know *why*, as well as the desire for closure, and even a latent compassion rooted in the possibility that the criminal’s actions may change and his life may be improved by realizing that victims, too, are more than objects (“Restorative Justice: Victim Empowerment”). When the creature’s tale is finished, restoration at first seems possible. Victor describes that “His words had a strange effect upon me. I compassioned him, and sometimes felt a wish to console him” (99). Victim and offender even arrive at an agreement that seems to resolve the conflict peacefully. But restoration cannot hold; as Shelley shows, the process fails to achieve the sympathy, benevolence, and compassion at the heart of restorative processes.

In the breakdown of the process, Shelley implies that restorative justice can fail in several regards; in order for the process to succeed, a delicate balance needs to be achieved on the part of the victim, offender, and community. First, the accused needs to take responsibility for his actions. This responsibility goes beyond merely retracing or exposing the crime – as the creature does during his testimony. It involves recognizing the harm done to the victim and feeling some level of remorse for the offense. After Victor has died, the creature tells Walton: “do you think that I was then dead to agony and remorse? – He...[Victor] suffered not more in the consummation of the deed; -- oh!

not the ten-thousandth portion of the anguish that was mine during the lingering detail of its execution” (153). Even after Victor has died, and the creature has killed William, Clerval, and Elizabeth, the creature’s pity for his own suffering continues to eclipse any that he may have caused his victims.

The creature’s suffering is grave, and Shelley vividly and sympathetically conveys the wrongs perpetrated against him. Nevertheless, his inability to acknowledge the harms he has caused Victor makes restoration or forgiveness impossible. In the context of a restorative process, even considering the creature as representative of a disenfranchised individual denied dignity and, in many ways, fundamental rights, these factors do not dismiss the need for him to acknowledge the harm he has caused his victim. Desmond Tuto explains, “A gross violation is a gross violation whoever commits it and for whatever motive” (107). The creature killed a child, a woman, and an innocent civilian. Shelley may provoke sympathy for the creature by rightfully pointing out the abuses that contribute to his actions, but in suggesting that he fails to take responsibility or recognize Victor’s humanity, she provides one reason the restorative process fails.

Second, in addition to this failure, Victor also falls short. Shelley suggests that Victor contributes to the process’s failure primarily because he refuses to recognize the offender’s humanity. Critics, such as David Marshall, have identified Victor’s failure as a failure of sympathy: “the failure to recognize others as fellow creatures” (213). Marshall explains that this failure echoes the concerns of both Godwin and Wollstonecraft. He reminds us of Caleb as “a being who is denied fellow feeling and cut off from the human species” and Jemima as “an orphan or outcast who is denied fellow feeling and sympathy” (Marshall 201) – not only because of her class but also her gender.

What Marshall, and others, identify as fellow feeling is deeply rooted in early nineteenth-century notions of sympathy. But a similar notion is also at the heart of the most famous example of contemporary restorative justice practice, South Africa's Truth and Reconciliation Commission, and its ethics informs the process in other venues as well.

Desmond Tutu describes the African ethic of *ubuntu*:

*Ubuntu* is very difficult to render into Western language. It speaks of the very essence of being human. When we want to give high praise to someone we say, 'Yu, u nobuntu'; 'Hey, so-and-so has *ubuntu*.'...It is to say, 'My humanity is caught up, is inextricably bound up, in yours.' We belong in a bundle of life. We say 'A person is a person through other persons.' (31)

This notion of connectedness and recognition is critical to the process of justice espoused by Godwin, Wollstonecraft, and Shelley. These qualities of acknowledgment, duty, and compassion link their nineteenth-century ideas of sympathy to Tutu's twenty-first century notion of *ubuntu* because they are crucial to achieving justice in both. Further, in Victor's failure to see his resemblance to the monster, or see him as a fellow creature, Shelley suggests injustice can be maintained on several levels.

Victor's inability to recognize the creature makes him ignorant of his own privilege, or the ways this privilege has helped maintain the creature's oppression. His denial of his duty to the creature makes Victor partially accountable for creating the misery that spurs the creature's violence. His refusal to acknowledge the creature's experiences makes Victor responsible for suppressing abuses that may have been resolved, and which, unresolved, contribute to crimes that make the creature a monster. In these failures, Marshall says, Victor becomes "in fact a being *like* his creature" (208). For if a human is a human through other people, as Desmond Tutu expresses, then "to dehumanize another inexorably means that one is dehumanized as well" (35). Shelley

demonstrates that to consider criminals monsters, or not to consider them at all, is to detract from our own humanity. Finally, Victor maintains injustice because by seeing the creature as nothing more than a monster, he allows the creature to abscond from responsibility. Godobo- Madikizela explains that,

...recognizing the most serious criminals as human intensifies it, because society is thereby able to hold them to greater moral accountability. Indeed, demonizing as monsters those who commit evil lets them off too easily...[dialogue] invites him, if he can, if he dare, to negotiate the chasm between his monstrousness and the world of the forgiven. It thus encourages him to stop denying the suspected truth: that all along, he knew that he was human and knew right from wrong. The act of humanizing is therefore at once both punishment and rehabilitation. (120)

Shelley, too, suggests that by dismissing the creature's actions as those of a monster, Victor in turn allows him to duck responsibility or avoid acknowledging that what he did was wrong. He fuels the creature's behavior by not holding him to the same standard of moral accountability.

The testimony and dialogue that Godwin, Wollstonecraft, and Shelley suggest is imperative to achieving restorative justice can only succeed if victim and offender recognize each other as fellow creatures. Shelley suggests, too, that recognition by the community can help compensate when it fails on other levels; had De Lacey or his family, the villagers, Walton, or the criminal justice system acknowledged and heard the creature earlier, perhaps this level of injustice may have been prevented. Graham Allen notes that sympathy is achieved within families in the novel (*Mary Shelley* 25), but Shelley underscores the need for fellow feeling beyond these tightly packed domestic structures. Her novel urges readers to see beyond their own prejudices and recognize the humanity in even the most monstrous of criminals.

## **XII. REPRESENTATIONS OF THE JUSTICE SYSTEM IN *FALKNER***

In her last novel Shelley returns to the issue of restorative justice. As *Frankenstein* does, *Falkner* draws attention to its criminal protagonist and raises issues of offender accountability and forgiveness. Bennett claims that, “the most dramatic direct comparison – and variance – between *Frankenstein* and *Falkner* contrasts the systems of justice in both novels” (12). Despite this assertion, no scholar has critically considered this issue – even Bennett limits her discussion of justice to two pages and focuses instead on the evolution of Elizabeth. One reason for this critical dearth is the relative obscurity of *Falkner*. Graham Allen reports that “There is still no readily available paperback edition, no scholarly edition along the lines of the Broadview Press editions of *Frankenstein*, *Valperga*, *The Last Man* and *Lodore*, and the reader will find very few discussions of the novel in the numerous collections of essays, journal articles and indeed critical monographs on Shelley’s work published over the last thirty years or so” (*Mary Shelley* 161). *Falkner* is worth considering because it extends and adds to the family’s conception of restorative justice. Since the novel is less widely read, this brief plot summary provides useful context.

In *Falkner* Shelley tells the story of a man who commits a crime of passion. Falkner kidnaps the woman he loves, Alithea Neville, because he believes she is trapped in an unhappy marriage. Almost immediately after he abducts her, he vows to return her to her family. Before he can do so, Alithea drowns attempting to escape and return to her children. Falkner and his accomplice, Osborne, bury her in an unmarked grave, and he flees the scene intending to commit suicide. Just as he is about to pull the trigger, Elizabeth Raby – a young orphan – prevents him. He determines to adopt her and compensate for his crime but keep his guilty secret. The two flee England and travel the

continent. Meanwhile, Alithea Neville's jealous husband and her son's father, Boyvill, is convinced she has run away with another man. After some time spent looking for, he applies for, and is granted, a divorce – assuring that Alithea's name will forever be tainted with disgrace. About ten years later, when Elizabeth is around sixteen, she and her “father” Falkner happen upon Gerard Neville, Alithea's teenaged son, for the second time. (The first time, Falkner feels so guilty he decides to enlist as a soldier in the Greek war of independence and seek his own death. He survives.) When they meet Gerard as an adult, he is roaming the world looking for answers to his mother's disappearance and trying to redeem her honor – still holding out hope that she might be alive. Guilt and remorse finally induce Falkner to admit to his offense. In a long narrative, written in the first person, Falkner describes the circumstances of his upbringing and confesses to the crime. Garver's father, Boyvill, pursues prosecution for murder. Throughout the legal process, Elizabeth stands by Falkner. She forgives him completely and sees Alithea's death as an accident rather than a murder. Gerard falls in love with Elizabeth, believes the truth of Falkner's account, and testifies in his favor during the trial. Boyville repents his revenge of Falkner on his deathbed, and wishes to recant his accusation of murder. Falkner is acquitted of murder, after a just criminal trial, and Elizabeth, Falkner, and Gerard reconcile, forgive, and seek to live together.

As may already be apparent, twenty years removed from her first novel and amidst the legislative reforms of the 1830s, Shelley's critique of the justice system is much less scathing than those in *Caleb*, *Maria*, or *Frankenstein*. Her most severely disenfranchised character is Alithea, the wife of the aristocratic Boyvill. Alithea's marginalized status has less to do with her social status, as was the case for Caleb,

Jemima, and the creature. Alitheia instead is marginalized because of her gender. Shelley suggests this inequity in the divorce proceedings held after Alitheia's disappearance.

Waged by her husband, a vengeful character who believes himself betrayed, the narrator describes that "he might view his injuries with the eye of passion, and other, more disinterested, might pronounce that she was unfortunate, but not guilty" (111). In spite of this potentially hopeful characterization of the judicial process, Shelley shows again that gender coupled with a believable narrative can be damaging. The judicial inquiry rewards Boyvill a divorce, in effect criminalizing the victim and propagating a false story that damages Alitheia's honor.

Despite this critique, Shelley revisits the tension between the traditional justice system and the pre-modern, extralegal chivalrous system in a noticeably more balanced manner than her father. On the one hand, she maintains that the traditional criminal justice process is flawed. Generally, by association with Boyvill, she automatically seems to detract from its positive potential; Boyvill's use of the law is repeatedly characterized, by himself as well as Elizabeth and Neville, as motivated by revenge and a desire to inflict ignominy (30, 216, 236, 237, 257). She also maintains the critiques implied in her parents' novels relating to retributive systems – they don't deter, they don't provide an atmosphere that encourages truth, and they don't rehabilitate. More particularly, she criticizes the legal practice of the "felony-murder" code.<sup>42</sup> Shelley seems to be arguing against this sort of an offense as a strict liability crime – that is, a crime in which the defendant is guilty regardless of intent or harm. She depicts Alitheia's death as an unintended consequence of Falkland's actions. Rather than arguing that such

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<sup>42</sup> According to Blackstone, "if one intends to do another felony, and undesignedly kills a man, this is also murder" (Vol. 4, Ch. 14).

an offense should be retributively punished as a murder, in order to deter future crimes from occurring, she seems to emphasize its accidental nature and focus more on the best means to repair harm once it has occurred.<sup>43</sup>

Shelley also suggests drawbacks to the traditional legal system, via Gerard Neville, one of the novel's most sympathetic characters. This critique deals with the system's appropriation of justice from the victim's control. Neville says, "[the] crime ought to receive its punishment from his own conscience, and at the hands of the husband or son of the victim in the field" (261). He again emphasizes, "I am tied, forced to inaction – the privilege of free action taken from me" (222). As opposed to the modern legal trial, Neville frequently represents the duel as a chivalrous, honorable means to avenge his mother's death, which allows the victim's family to take part in, and control, the justice process. Julia Saunders explains that "in contrast to the disapproving description of the 'bourgeois' criminal justice route chosen by Boyvill to prosecute his wife's destroyer, Gerard's desire to meet Falkner 'honourably' in a duel is treated sympathetically, almost with approval" (219).

I agree with Saunders' claim. I also acknowledge Simpson's historical account of the resurgence of dueling during the early nineteenth century as a means for middle class individuals to align with the aristocratic class.<sup>44</sup> However, a more careful look at Shelley's representation of justice models suggests a closer alignment with Godwin's

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<sup>43</sup> Allen also notes her criticism of the limitation of action – she seems to advocate for a time limit after a crime has occurred in which the offense can no longer be prosecuted. Allen links this concern to Godwin. He quotes from Godwin's journal "Let there be an Act of Pt. that, after a lapse of ten years, whoever shall be found to have spent that period blamelessly, and in labours conducive to the welfare of mankind, shall be absolved. No man shall die respecting whom it can reasonably be concluded that if his life were spared, it would be spent blamelessly, honourably, and usefully" (*Mary Shelley* 171).

<sup>44</sup> See Antony E. Simpson, "Dandelions on the Field of Honor: Dueling, the Middle Classes, and the Law in Nineteenth-Century England." *Criminal Justice History: An International Annual*. 9 (1988): 99-156.

negative perspective on dueling, as discussed in Chapter One. Like Godwin, Shelley implies that duels are also vengeful, unmerciful, and, in their violence and suppression of truth, fail to repair harm; Boyvill tells his son “[Falkland] will...refuse to meet you, or, meeting you, will refuse to fire; and either it will end in a farce for the amusement of the world, or you will shoot a defenseless man. I do not see the mercy of this proceeding” (217). Shelley also reminds us of a duel’s certain violent outcome – and the futility of justice they achieve – when Gerard thinks of how Elizabeth will suffer, no matter who dies and when Boyvill tells Gerard “nor do I wish him to add the death of my only son, to the list of injuries I have sustained” (217). Shelley underscores, as Godwin had, how dueling does little to achieve justice or expose truth, but rather contributes to greater harms for individual and community.

Although Shelley represents a rather ambiguous picture of both systems, she ultimately favors the criminal justice system and suggests that, despite its flaws, it has made strides. For example, in previous novels by the family, the justice system is almost solely depicted as a corrupt tool of the aristocracy. While Shelley links legal prosecution with Boyvill, the narrator also tells us that Elizabeth Raby’s biological father, a noble character, is “called to the bar” (10). Their family lives in relative poverty near the law courts in London until he eventually dies from consumption. This more humble, humanized representation of the legal profession is not limited to Raby. Lawyers for both the prosecution and the defense appear as customary, neutral figures. In fact “the barrister who conducted the prosecution, narrated the facts rather as a mystery to be inquired into, than a crime to be detected” – a marked difference from a manipulator of circumstantial evidence as seen in *Caleb* and *Frankenstein* (286). The magistrates are

justice driven, rather than merely seeking closure, since “the judges...at once admit[ted] the necessity of waiting for so material a witness” (247). Shelley even underscores the humanity of the jurors; Falkland describes that “All we have to do, is prove this in a sort of technical and legal manner; and yet hardly that – for we are not to address the deaf ear of law, but the common sense of twelve men, who will not be slow, [he] felt assured, in recognizing the truth” (253). Shelley stresses the human control of the courts when Falkland shifts from thinking in “technical” terms, to focusing on men. She suggests his confidence when he expresses belief in their ability to discern the truth.

Aside from the legal agents, Shelley presents the trial process as relatively fair. For example, Boyvill describes the prosecution process as a procedure of checks and balances: “The truth will be sifted by three juries; this is no hole-and-corner vengeance; ...We shall not lie, nor pervert facts; we tell who it was revealed to us our mother’s unknown grave; it rests with them to decide whether he, who by his own avowal placed her therein, has not the crime of murder on his soul” (218). Aside from Boyvill, Neville describes the community’s belief in the legal process: “all assert that the approaching trial alone can establish the truth” (259). Shelley also depicts the perpetrator, Falkner, assured that “he asked for justice, and he did not for a moment doubt that it would be rendered to him” (287). When the jury arrives at an acquittal after few moments of deliberation, Shelley suggests that the trial procedures ran smoothly and arrived at just outcomes. She represents the prison somewhat favorably, since although Falkner hates being confined, he is “in the best rooms that could be allotted to him, consistently with safe imprisonment, and with such comforts around, as money might obtain” (241). She even depicts the turnkey as sympathetic; the guard “looked on Elizabeth as an angel, and

Falkner as a demi-god” (287). All in all, a very, very far cry from the sentiments and conditions, regarding the justice system, conveyed in her parents’ texts as well as her own earlier novel.

Bennett and Saunders help explain this shift. Noting the less fantastical nature of the novel – as opposed to *Frankenstein’s* setting, plot, and characters – Saunders says that “her last two novels represent a reconciliation of progressive ideas with the possible...[they] continue to debate on a more humble scale, grasping from the jaws of defeat small victories for radical ideas” (222) Saunders helps expose how Shelley’s novel is still reformist, then, but more gradual and pragmatic. Bennett describes one reason why this shift may have occurred. She explains “*Falkner*, recontextualized her philosophy to reach an increasingly middle-class and materialist Victorian society, one that had largely turned away from Romantic radical politics” (2). What neither Bennett nor Saunders mention, however, is the possibility that the radical politics of Shelley’s parents era had materialized in gradual legislative reforms, particularly during the 1830s. Perhaps Shelley’s less scathing critique reflects optimism brought on by small steps toward practical change.

### **XIII. RECOGNIZING THE OFFENDER IN *FALKNER***

In any case, perhaps as a result of this less severe critique, her novel places less responsibility for the offense on social institutions and more responsibility on the offender. Unlike *Frankenstein*, or other popular crime novels of this later era, there is little attempt to justify or condone the perpetrator’s crime. Godwin’s later novel, for example, *Deloraine*, follows this paradigm. Chatterjee explains how Deloraine never fully takes responsibility, but rather seeks to justify his offense; she says “By novel’s end, Deloriane’s tale is less a confession or a cautionary tale than a justification of his own

crime” (31). This move to provoke sympathy for the criminal stemmed from the trend begun in *Caleb* and modified in *Frankenstein* of holding institutions largely accountable for crimes. For example, Pykett describes that Edward Bulwer’s famous Newgate novel, *Paul Clifford*, “seeks to challenge its readers’ assumptions about the nature and causes of crime and their prescriptions for punishment by demonstrating that the legal and penal systems of Clifford’s day were oppressive, corrupt, inhumane and ineffective” (22). Part of the way in which novelists accomplish these goals in the Newgate novels is by suggesting that, due to such oppression, criminal behavior may be rational, excusable, and thereby, somewhat exculpatory. Pykett explains that this trend went so far that by the time Bulwer published *Eugene Aram*, who justifies his murder completely, critics of the genre were complaining that the novelists “romanticized and glamorized crime...[and] invited sympathy with criminals rather than with the victims of crime” (20).

Shelley’s last novel intervenes in the literary representation of criminality as it has evolved by the time of the Newgate novels.<sup>45</sup> Like these popular novels, *Frankenstein* and *Falkner* generate sympathy for offenders. However, unlike the Newgate novels, Shelley draws attention to the criminal within a larger context of restorative justice consistent with her parents’ concerns; rather than overlooking the victim at the expense of the offender, Shelley’s last novel considers them both. She depicts the manner in which Alithea continues to suffer after her death by the desecration of her reputation. She suggests how Boyvill’s irresolution turns him into an even more bitter and spiteful man. Perhaps most importantly, she shows how Alithea’s son Neville continues to wrestle with

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<sup>45</sup> No previous scholar has looked at Shelley’s last novel as intervening in this genre, perhaps because some maintain that “The Newgate novel was associated exclusively with male authors” (Pykett 19).

his mother's mysterious loss and the grave pain and suffering the crime has caused him. Beyond this attention to the victims, Shelley's novel also begins to move away from the trend of primarily blaming systemic abuses and looks more deeply at the restorative effect of offender accountability.

In keeping with the more evenhanded tone of the novel, *Falkner* does not dismiss circumstances that may contribute to crime. Like *Frankenstein*, Falkner's first-person testimony draws attention to certain aspects of the offender's development that might predispose him towards criminal behavior. He recounts his unmothered youth and his abusive, alcoholic father who drinks himself to death. He describes how his next parental figure, his uncle, treats him with no compassion, how his school master is punitive and cruel, and how the boys with whom he boards taunt him and even try to kill his few companions – a little family of mice. He almost seems to echo the creature when he describes “No eye of love ever turned on me, no voice ever spoke a cheering word” (158). Bunnell explains how, likewise, these social factors contribute to Falkner's crime: “While undeniably to blame for Alithea's death, Falkner is indeed a victim of social inequalities and customs” (284). Indeed, Shelley represents how Falkner's birth order in the family places him in an unfair position in regards to inheriting wealth. She also suggests that some of his destructive ideas about masculinity and control stem from his family's wealth and chivalrous mentality (Saunders 217). Despite these less than desirable parental and institutional influences, Shelley also implies that Falkner is given a chance to become benevolent.

Unlike Caleb, Jemima, or the creature, who have almost no opportunity to overcome their social abuses, Shelley portrays a less oppressive situation in *Falkner*. In

doing so, she seems to imply that some offenders have a chance to overcome circumstances that may contribute to criminal behavior. For example, when Falkner's uncle sends him to live with Mrs. Rivers and her daughter Alithea – friends of the family – Falkner describes how he is loved, accepted, and valued. He learns compassion, benevolence, and forgiveness, and these qualities are practiced towards him. When he gets into trouble at school, or almost finds himself in a worse predicament because he hurts a man trying to prevent him from harming his mice, Mrs. Rivers and Alithea forgive him. They condemn his behavior, but they treat him with affection and concern. Despite this opportunity to adopt the patient, kind attitude he learns from the Rivers, Shelley suggests that Falkner maintains his destructive, passionate temper and his need to control things; he states “I tried to subdue my hatred, to be as charitable and forgiving as Mrs. Rivers implored me to be; but my tormentors had the art of rousing the savage again, and despite good resolves...I was again violent and rebellious; again punished, again vowing revenge, and longing to obtain it” (163-164). In line with the greater attention she draws to accountability in the novel, Shelley suggests that when Falkner has an opportunity to change, he willfully chooses not to take it. She also seems to point to an individual's choice in committing crimes when her narrator states: “[the guilty] knows that the still voice within was articulate to him. He remembers that at the moment of action he felt his arm checked, his ear warned; he could have stopped, and been innocent” (197). The tone of the novel places more responsibility on the choice of individual offenders.

#### **XIV. OVERCOMING FAILURES OF RESTORATIVE JUSTICE IN *FALKNER***

Despite Falkner's poor choices and wavering sense of responsibility early in the novel, Shelley suggests how personal accountability becomes critical to a successful

restorative justice process after the crime has been committed. As noted earlier, Falkner's criminal trial for murder ends in his acquittal.<sup>46</sup> Perhaps even more important than this formal aspect of justice, Shelley draws our attention to the supplemental process of testimony, dialogue, and forgiveness that occurs beyond the boundaries of the courtroom. As opposed to *Frankenstein*, restorative justice is successful in *Falkner* because the offender takes responsibility for his wrong doing, expresses remorse, and considers the harm done to the victim.

Although he expresses guilt throughout the novel, Falkner confesses when he recognizes the survivor's suffering. After Falkland reads Elizabeth's letter portraying her sympathy with Gerard, he finally acknowledges what his offense has done to both Alithea and her son. The narrator observes,

never had he seen the effects of his crime in so vivid a light; avoiding the name of Neville, he had never heard that of his victim coupled with shame – she was unfortunate, but he had persuaded himself that she was not thought guilty; dear injured saint! had then her sacred name been bandied about by the vulgar, she pronounced unworthy by the judges of her acts; ignominy heaped upon the grave he had dug for her? Was her beloved son the victim of his belief in her goodness? Had his youthful life been blighted by his cowardly concealments? Oh, rather a thousand deaths than such a weight of sin upon his soul! – He would declare all; offer his life in expiation – what more could be demanded! (145)

Whereas in *Frankenstein*, Shelley suggests that justice fails because the creature never considers the harm he has caused Victor or his family, Falkland acknowledges his harm to Alithea and Neville and, in fact, it motivates him to confess. Not only does he recognize the pain he has caused, he takes responsibility for it. Falkner's first person testimony, an interruption from the narrated third-person form of the rest of the novel, formally enacts Falkner's ownership of his crime. Although at times during his confession Falkner seems like he may be trying to skirt blame, he reassures Alithea's

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<sup>46</sup> Falkner is acquitted of murder, but admits to kidnapping Alithea. He is not charged in the latter offense.

family that, “Would I shift to other shoulders the heavy weight? No! no! crime and remorse still me to her” (173). Beyond his private admission of guilt, he testifies publicly, declaring his accountability to the community as well. He also expresses remorse for his action. Godobo-Madikizela explains the significance of remorse to the restoration process because “When perpetrators feel remorse, they are recognizing something they failed to see when they violated the victim, which is that victims feel and bleed just like others with whom they, the perpetrators, identify. Remorse therefore transforms the image of victim as object to victim as human...At the same time, remorse recognizes the pain of the surviving family members” (130). Falkner’s remorse signals fellow feeling for not only Alithea but Neville too – a simple act of recognition not accomplished in *Frankenstein*.

Further, Shelley suggests how an offender’s remorse is important to a victim’s receptivity and ability to feel compassion for a perpetrator. Even if a victim can never understand a perpetrator’s crime or identify with the perpetrator, remorse suggests to a victim that *he* (the criminal) feels bad for *you* (the victim) and this emotion helps a victim to see, finally, that a criminal is human. Shelley suggests that Neville’s capacity to think beyond Falkner’s horrible crime in order to envision him as a man is critical to repairing harm. Neville articulates this act of fellow feeling when, after Falkland’s public testimony, he thinks, “...if his act was criminal, dearly has he paid the result. I persuade myself that there is more real sympathy between me and my mother’s childhood’s friend – who loved her so long and truly – whose very crime was a mad excess of love – than one who knew nothing of her” (295). Shelley suggests that this difference between the justice process in *Frankenstein* and that in *Falkner* – the ability of victim and offender to

recognize each other's humanity – is critical to moving towards repair of harm and forgiveness. Sites reminds us how this act echoes Godwin's idea of justice: "Neville must overcome the base influence of both his lower nature (the desire for revenge) and the world (the expectation that he seek revenge) to accomplish the Godwinian moment of justice: forgiveness" (169). Neville's ability to move beyond revenge and seek reconciliation recalls the justice achieved in Caleb's and Falkland's final tribunal.

Although Neville accepts Falkner's repentance, Shelley does not dismiss the skepticism she raised about confessions in *Frankenstein*. Boyvill articulates this skepticism when he reacts to Falkner's written admission: "Here is a long narrative...there is much excuse, and much expiation here. The story ought to be short that exculpates her; I do not like these varnishings of the simple truth" (208). Even Garver begins to second guess Falkner's testimony; the narrator describes that "He re-read the manuscript with a new feeling of skepticism; this time he was against the writer, he detected exaggeration, where, before he had only found the energy of passion: he saw an attempt to gloss over guilt" (214). Shelley does not resolve this skepticism in her novel. Instead she seems to suggest that, true or not, great benefits can be gained from accepting a confession's intentions. Godobo-Matikizela explains what can be gained even when a disclosure's veracity or defendant's remorse cannot be confirmed:

How do we judge the genuineness of...remorse? How do we know that the signs of alleged contrition are not simply a product of the perpetrator's having been caught, or of changes within the society that have destroyed his power base and support structures and have left him vulnerable?...[these] questions are real and...legitimate. Yet it remains equally legitimate that when perpetrators do in fact express regret or guilt or contrition, however it may be ascertained, what seems to lie, as Nicholas Tavuchis has put it, 'beyond the purview of apology,' can in fact be transformed from an unforgivable deed into a forgivable one, into 'this has happened and we must find a way to move forward.' Philisophical questions can and should give way and be subsumed by *human* questions, for in

the end we are a society of people and not ideas, a fragile web of interdependent humans, not of stances. (125, her emphasis)

Shelley's answer to this human question in *Falkner* is that the advantages to be gained by accepting remorse and moving toward forgiveness are worth the risk. Although Falkner's true intentions or even the veracity of his account of the crime cannot be confirmed, Shelley depicts the benefits of this process for offender, victim, and community. She suggests that the benefits outweigh the assurance of verifiable truth.

As the perpetrator, Falkner benefits most obviously: he is met with compassion and forgiveness instead of punishment or scorn. Still, beyond these tangible results, given the opportunity to testify and express his wrongs, Falkner shows the effects of "the singular relief which *confession* brings to the human heart" (241, her emphasis). He experiences a physical transformation; the narrator tells us that "health again filled his veins...It was evident now that the seeds of disease were destroyed – his person grew erect" (291). Mentally, he feels relief and liberation, which manifests in more compassion and benevolence: "serene lofty composure had replaced his usual sadness; and the passions of his soul, which had before deformed his handsome lineaments, now animated them with a beauty of mind" (224). Falkner gains physically and emotionally from testimony and dialogue.

Beyond these benefits to the perpetrator, Shelley suggests the myriad ways victims can benefit from a restorative process. First, a survivor's family learns of a previously unknown version of events that prevented them from living their own life; when Gerard finally learns what happened to his mother, he can begin to move on and form relationships of his own. Second, this knowledge can help the victim's family move toward forgiveness and reconnect with the victim in a way that provides closure.

Godobo-Madikizela describes how forgiveness “is a choice the victim makes to let go of bitterness. This usually occurs when there has been a change in the way the victim relates to his or her trauma...Forgiveness can also open up a new path toward healing for the victim” (97). This new path can mean mourning and letting go of a loved one, rather than holding onto irresolution. Finally, rather than condoning the perpetrator’s behavior, forgiveness can be empowering because it places the victim in the role of holding the offender accountable. Neville describes this empowerment when he tells Elizabeth “It is a godlike task to reward the penitent. In religion and morality I know that I am justified: whether I am in the code of wordly honour, I leave others to decide; and yet I believe that I am” (299). Shelley highlights the strength forgiveness gives victims when Neville recognizes that *he*, rather than the justice system or even the community, holds the authority to determine this aspect of his mother’s justice process.

Finally, as I argued in my chapters on Godwin and Wollstonecraft, such a restorative process can also benefit the community. Although less noticeable in Falkner’s testimony that Jemima’s or Caleb’s, creating a public space to disclose private abuses or offenses can reveal systemic abuses that need to be corrected. Bennett explains that in Shelley’s last novel Falkner’s confession “functions in the novel as commentary on poverty and suffering, largely the result of selfish fathers and selfish husbands who control society. So, too, his description of his ten year’s service in India...gives Mary Shelley the opportunity to fault both the East India Company and the Indian rajahs” (11-12). Further, while much of the reconciliation in the novel happens in addition to, and outside of the courtroom, Falkner’s public accountability allows the community to honor Alithea’s life in a way that had been previously silenced.

This emphasis on community marks one last way justice seems to be achieved in *Falkner* where it is not in *Frankenstein*. Shelley implies that restorative justice can only succeed when we begin to value other human beings as fellow creatures, regardless of our connection to them. Critics such as Graham, Bennett, and Sites have pointed out the language in the novel, which Shelley uses to designate non-familial relationships such as “more than sister,” “brother,” and “more than father.” Sites explains that Shelley “adopts the premise that relationships should be based on more substantial values than blind adherence to the creed that blood is thicker than water. By doing so, Shelley picks up a central theme of the social reform agenda of her parents” (215).<sup>47</sup> Shelley conveys the possibility of this quality by means of Elizabeth’s fidelity and compassion for Falkner in spite of the absence of biological paternity; Garver’s forgiveness of Falkner despite his offense; and even in the way that minor characters like Lady Cecil and Mrs. Raby overcome personal prejudice or religious differences in order to support Elizabeth and reach out to Falkner. Shelley’s depiction of respect within the community signifies another barrier she suggests needs to be overcome if we wish to achieve justice beyond that offered by *Frankenstein*.

## XV. CONCLUSIONS

In *Frankenstein*, Shelley follows her parents in critiquing inequities against disenfranchised individuals in the justice system through the coerced confession and wrongful conviction of Justice Moritz. Placed in the center of a text constructed around other confessions, Justine’s episode echoes Caleb’s in revealing how a logical storyline

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<sup>47</sup> Other critics, such as Anne K. Mellor and Katherine Hill-Miller, have focused on this language suggesting an incest subtext as it relates to Shelley’s attempt to psychologically work out her issues with Godwin. Both of their readings are compelling, and Hill-Miller’s in particular is convincing, but I have to agree with Allen “that language employed by Falkner and Elizabeth to describe their relationship can be reconnected to that life-long attempt on the part of Godwin to assert a social bond between individuals more primary than the bonds of family” (*Mary Shelley* 167).

and material evidence can be used to convince the justice system that an individual is guilty, particularly when the accused lacks authority or the means to protect herself. But *Frankenstein* goes further than *Caleb Williams* in its exploration of the power relations undergirding criminal trial procedures involving testimony; Shelley suggests that a justice system that demands closure can contribute to coercing confessions for the sake of certainty. Moreover, she suggests that false confession can be induced by an individual's desire to be loved, accepted, or forgiven. Despite this suggestion, her novel does not dismiss the value of confessions. Rather, it cautions against using confessions to acquit or condemn and asks readers to be mindful of the circumstances influencing a confession's transmission. Additionally, Shelley's inclusion of the victim's (Victor's) and the offender's (the creature's) first-person testimony emphasizes the need to recognize both accounts of a crime. While their side-by-side accounts do not provide readers certain resolution, they help us to understand the circumstances leading to the creature's offenses. The creature's account of his marginalization reinforces Godwin and Wollstonecraft's notions that social alienation and abuse may not only silence the truth of events and prevent recovery from trauma, but may also contribute to desperate and criminal acts. Finally, in the creature's confrontation with Victor at Montanvert, Shelley gestures toward the sort of restorative justice process her parents had imagined: victim and offender engage in dialogue about the wrong committed in order to understand its effects and seek to repair its resulting harm. In the failure of their process, however, Shelley suggests the obstacles to sympathy, benevolence, and compassion at the heart of restorative processes. She shows the drastic consequences that may result from

maintaining criminal justice inequities and failing to acknowledge both victim and offender.

Twenty years later, *Falkner* reengages the possibility of restorative justice more optimistically. The novel critiques the justice system mildly, but it offers a much less scathing analysis than *Caleb, Maria, or Frankenstein*. Concern for marginalized or disenfranchised individuals, particularly disenfranchisement based on class, is absent. As a result of this less severe critique, less responsibility for the offense is placed on social institutions and more responsibility is placed on the offender. *Falkner* provokes sympathy for the perpetrator because he suffers from remorse, but unlike other popular crime novels of this later era (Newgate Novels), there is little attempt to justify or condone his crime. Further, Shelley dramatizes a successful restorative process that occurs as a supplement to a just criminal trial. In Falkland's testimony, he takes responsibility as an offender for his wrong doing, expresses remorse, and considers the harm done to the victim and the victim's family. In Falkland's disclosure, Shelley does not dismiss the skepticism about confessions which she raised in *Frankenstein*. Instead, she represents the belief that in a stable system seeking restorative justice, an offender's confession can be valuable by providing closure to victims, holding an offender to a standard of accountability, and aiding a community in both remembering the past as well as moving forward.

Therefore, while Shelley continues to comment on justice in both novels, she begins to acknowledge the possibility that justice can be achieved within a reformed system. She maintains the value of acknowledging the role environmental factors play in influencing criminal behavior because understanding these factors can help to prevent

future crimes and make sense of those that have already occurred. In addition to this value, which was critical to both Godwin and Wollstonecraft, she also suggests that victim, offender, and community alike can achieve greater justice and repair greater harm by holding the perpetrator more accountable. She shows how this accountability can be a powerful component to a process centered on testimony and dialogue, which seeks to repair harm. Throughout the evolution of her ideas about justice she always maintains the importance of acknowledging and listening to fellow creatures – be they monster or criminal.

As a twenty-first century feminist, I abhor condoning Falkner's behavior (the forceful abduction of a woman). Even though the creature kills several innocent victims, his status and abuse somehow make it easier for me to consider why he committed such harms. But part of the value of Shelley's novels is their suggestions that no matter what our personal feelings, no matter our own obstacles to sympathy, creating the conditions to repair harm requires making space to hear *every* offender. Hearing an offender's perspective doesn't equate condoning their behavior. Instead, it means acknowledging that a perpetrator is a fellow creature, so that one's own humanity can be reaffirmed and movement toward the future can become a possibility. Shelley's novels show us that criminal behavior is complicated. So are our motivations to confess or to forgive. But Godobo-Madikizela tells us that "through the vicarious experience of stories of forgiveness, a society can begin to heal itself" (133) – Shelley's novels imagine, dramatize, and give us the vocabulary for both accountability and consideration of forgiveness, despite such obstacles.

## Chapter Four

### Sexual Crime and Silence in Percy Shelley's *The Cenci*

Percy Shelley wrote *The Cenci* in 1819. He based his play on the life of Beatrice Cenci, a woman from a prominent Roman family who was tried, convicted, and publicly executed for the crime of murdering her father in 1599. Although no reliable historical accounts of Beatrice Cenci have survived, the versions that exist tell of her father's cruel treatment of her, including incestuous rape, as the motive for his murder. Shelley's play dramatically represents Beatrice Cenci's story. Act I depicts Francesco Cenci's cruelty towards his family, his corruption, and his collusion with the Pope (acting as church and state authority). Act II dramatizes Beatrice's kind, gentle nature and her failed attempts to elicit help and protection from the community or the state. Act III represents Beatrice's trauma resulting from her father's act of sexual violation, which occurs off stage during Acts II and III. Act IV discloses the Cenci's murder, with Beatrice and her family arranging for the crime. Beatrice, her step-mother Lucretia, her brother Giacomo, and the two men they hire to fulfill the deed—Marzio and Olimpio—are all arrested. Act V depicts their trial. Beatrice alone refuses to confess to the crime(s)—she neither discloses her rape nor admits to murdering her father. The play ends as the family awaits their execution.

What could Beatrice—a character who arranges for her father's murder—contribute to a discussion about justice processes seeking to restore and repair harm? How does Percy Shelley's *The Cenci*—a play that dramatizes vengeance, violence, and a seeming denial of responsibility or remorse—figure into the Godwin-Wollstonecraft-

Shelley family vision of justice, which privileges recognition, accountability, and understanding over punishment and retribution?

Despite its unlikely congruence, in this chapter I hope to suggest that *The Cenci* continues to contribute to the literary family's ideas about restorative justice. Like *Caleb Williams*, Shelley's play represents a justice system founded on corrupt processes and outcomes, which fails to redress harm or produce truth. Like *The Wrongs of Woman*, *The Cenci* calls attention to a victim denied protection or redress because of her gender and the nature of the crime committed against her. As Mary Shelley does in *Frankenstein*, Shelley's play shows the consequences of not recognizing disenfranchised individuals and emphasizes the circumstances that may lead to criminal behavior.

Rather than moving readers toward restorative reforms by imagining restorative possibilities, however, Shelley's play urges his audience toward change by dramatizing the alternative: *The Cenci* insists on recognizing and making space for disenfranchised individuals because abuse and silence may contribute to retributive, vigilante justice if individuals are denied a more equitable and restorative option. His play complicates the accountability and remorse for which *Frankenstein* and *Falkner* advocate by considering how imposed silence makes such accountability impossible and implicates the justice system in hypocrisy. Finally, though the content of *The Cenci* elides restorative representations, the form does not. The choices Percy Shelley makes regarding narrative voice and dramatic representation embody an even more active form than Godwin, Wollstonecraft, or Mary Shelley. This form draws parallels between the rhetorical choices called for in matters of justice and literature, endorsing an interactive, democratic

model that grants victims, offenders, and the community the opportunity to participate in processes and outcomes.

Shelley's preoccupation with issues of justice, silence, and legal disenfranchisement in *The Cenci* reflects issues relevant to the historical context in which he wrote his play and parallels preoccupations of Godwin, Wollstonecraft, and Mary Shelley. Just as Godwin and Wollstonecraft wrote their fiction during a historic moment that compelled them to speculate about the means and ends of justice, *The Cenci* was also written during a time of legal change and political unrest. Thirty years removed from the optimism and individual rights originally promised by the possibility of the French Revolution, Mary and Percy Shelley's England was again instituting repressive measures to silence protests and using legal means to criminalize open discussion and dialogue. Literary scholars Paul Foot and Michael Scrivener have traced the development of Shelley's political thought against the backdrop of social and political changes that occurred during his lifetime.<sup>48</sup> While noting Shelley's political engagement throughout his career, both scholars emphasize the government's repressive measures leading up to, and during, the time of *The Cenci's* composition in the summer of 1819. Foot explains that,

In 1817, habeas corpus was suspended again and imprisonment without trial was legalized. In the same year, Sidmouth introduced two more 'gagging Acts' to prevent meetings of more than fifty people for any purpose whatsoever. In 1819, following the massacre of Peterloo, the government introduced six more Acts which gave unprecedented powers to magistrates to convict anyone suspected of conspiring or meeting to discuss political questions. It gave them powers to enter homes without warrants and to hound and bully any of their suspects....All these laws...were enforced by a brutal system of punishment. (32-33)

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<sup>48</sup> Paul Foot's *Red Shelley* (1980) and Michael Scrivener's *Radical Shelley: The Philosophical Anarchism and Utopian Thought of Percy Bysshe Shelley* (1982) are still two of the most oft cited studies related to Shelley's political thought and historical context.

Foot's description of the repressive legal and political conditions in which Shelley wrote *The Cenci* recalls the repressive climate of Godwin and Wollstonecraft's 1790s – when the state's moves to quiet and disband discussion among community members, and to abuse and silence individuals within the justice system, likely contributed to the authors' vision of a justice system that promoted individual participation and greater community control. Whereas government reaction during the 1790s was largely a response to fear of rebellion instigated by the French Revolution, Foot explains that the government's reaction during Shelley's lifetime was different. He cites the Crown's reaction as a response to working class uprisings and frustration brought on by the end of the Napoleonic Wars, changing employment opportunities resulting from the industrial revolution, and an increased demand for wider suffrage (32-34). Nonetheless, the violence that had resulted from the French Revolution still remained fresh in the minds of state officials and English citizens during Shelley's era, leading to both cautionary, reactionary policy and doubts about the possibility of non-violent, democratic reform.

Silence and repression were also issues for victims of sexual crime during the time that Shelley wrote *The Cenci*. General legal changes meant that, as noted in Chapter Two, the “era of disenfranchisement” was underway as the state moved victims further and further from the justice process in an attempt to formalize and increase the efficiency of judicial processes (Dignan 63). For women who were victims of sexual crimes, legal protections had improved minimally since Wollstonecraft depicted Jemima's plight in *The Wrongs of Women*, while the perception of rape victims and the cultural conditions for disclosing sexual crimes had not. Anna Clark notes that

The increased efficiency and diminished corruption of the British legal system did bring more rapists to justice during this period [the early nineteenth century]. In

the North-east assize circuit, for instance, 54 per cent of accusations of rape on females over twelve resulted in trials between 1800 and 1829, as opposed to 33 per cent between 1770 and 1799. (60)<sup>49</sup>

Despite this statistical example of juridical improvement, women still faced immense barriers in achieving justice for sexual crimes at the time Shelley wrote *The Cenci*.

According to Clark, the barriers preventing victims of sexual crimes from achieving justice included silence, articulation, and proof. Clark explains that these barriers resulted from fears stimulated by a number of cultural conditions, including women's transition from the domestic to the public sphere, growing evangelical movements, and an emphasis on scientific language (10-11). These cultural conditions increased concerns about protecting public morality and safe guarding women's chastity. They also affected victims' ability to achieve justice by making it difficult to talk about and prove sexual crimes, both prior to and during justice processes. Clark summarizes and contextualizes the transition in cultural attitudes from *The Wrongs of Woman* to *The Cenci*, explaining, "While the angry words of eighteenth-century victims of rape had largely been ignored, in the nineteenth century women's discourses were scrutinized, transformed, and ultimately silenced by authorities and rapists alike" (75). *The Wrongs of Woman* and *The Cenci* reflect this shift: Wollstonecraft addresses the cultural dismissal of Jemima's victimization, while Shelley addresses cultural silencing and scrutiny regarding sexual crimes. As I hope to reveal, *The Cenci*, like Wollstonecraft's *Wrongs of Woman*, continues to confront the barriers facing victims of sexual crime and explode the silence surrounding their violations.

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<sup>49</sup> As introduced in Chapter Two, historian Anna Clark looks at over one thousand cases of sexual assault between 1770 and 1845 in London and the Northeast of England in her important study, *Women's Silence Men's Violence* (1987). Her study considers the way that court transcripts, depositions, and local newspapers reveal cultural beliefs about sexual crime (17).

In a political and legal climate in which silence and oppression pervaded, particularly for individuals disenfranchised by gender or class, Shelley attempted a remarkable task in writing *The Cenci*. Such a context emphasizes his risk in 1819 of fictionalizing and dramatizing Beatrice Cenci's historical narrative of rape. It helps explain the motives he shares with his predecessors – a plea for a system of more equitable and restorative justice. It also helps explain the different method he used to advocate for justice reform; the subtle changes in social, political, and legal conditions which had occurred during Shelley's historical context contribute to the more drastic and disturbing nature of his fiction.

Despite the similarities shared by *The Cenci* and the other fictions my project addresses, and despite the unique additions its differences contribute, scholarly studies have not treated these texts together or discussed the play's treatment of justice and gender – an aspect critical to the family's concern with political equality and legal marginalization.<sup>50</sup> Michael Blood acknowledges that “*The Cenci* has now taken its place securely in the canon of Shelley's work,” and he notes that the play has been critically understood in multiple ways, including “as a critique of patriarchy, of political complicity, the corruption of authority, the self-legitimizing structure of social institutions, or the self-immolating tendencies of violent revolution” (370).<sup>51</sup> Without

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<sup>50</sup> There are two partial exceptions to this statement. The first is Michael Scrivener's, “Trials in Romantic-Era Writing: Modernity, Guilt, and the Scene of Justice” (2004), which provides a general survey of romantic era texts that include trial scenes. Among these texts he discusses in his six page survey are *Caleb Williams*, *The Wrongs of Women*, *Frankenstein*, and *The Cenci*. He argues these texts put forth radical critiques that were “antithetical to the providential worldview” (131). The second exception is Young-Ok An's “Beatrice 's gaze revisited: Anatomizing *The Cenci*” (1996). She argues that *The Cenci* provides a “useful textual instance to investigate...operations of violence, law, and desire that intersect with gender issues” (27). I build on both arguments by placing *The Cenci* in context with historic justice reform, and reading it in conversation with the family's other fictional texts, which treat issues of justice.

<sup>51</sup> Shelley's play has also been read recently from a Queer Theory stance, particularly regarding the play's suggestion of sodomy. For example, in “Some of my Best Friends are Romanticists: Shelley and the Queer

disputing the validity of these understandings and in many cases borrowing from and extending their arguments, this chapter suggests that considering *The Cenci* again – from the perspective of the family’s vision of restorative justice – is a worthwhile task that fulfills a significant critical gap. First, this gap is significant because, whereas William Godwin’s influence on Shelley has been discussed, consideration has not focused on the texts my project addresses – *Caleb Williams* and *The Cenci*.<sup>52</sup> Second, attention to Mary Wollstonecraft’s and Mary Shelly’s influence has been almost non-existent – a glaring discrepancy since we know Percy Shelley read and admired both women’s texts and Mary Shelley helped him with this work more than any other.<sup>53</sup> Third, this gap is significant because his text, as do other texts produced by this family, reflects and engages in the cultural debate about criminal justice leading up to the Prisoner’s Reform Bill in 1836, which would formally replace participation by victim and accused with representation by legal advocates. This chapter, then, considers *The Cenci* alongside the

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Project in Romanticism,” Berry “traces Shelley’s conversion of the historical Count Cenci’s acts of sodomy into what Shelley regards as ‘a very poetical circumstance,’ incest. Shelley imagines a complex alibi with which he shapes his own intense curiosity about intimacy between men.”

<sup>52</sup> Godwin’s influence on Shelley’s political philosophy has been extensively considered, although most often mainly in connection with *Political Justice*. Pamela Clemit provides a useful critical survey of studies that trace Godwin’s influence on Shelley: “Godwin’s rehabilitation began with Kenneth Cameron’s *The Young Shelley: Genesis of a Radical* (1951), in which he is presented as one of several radicals of the 1790s to influence Shelley’s early thought, a view taken up by Gerald McNiece. The first major study to recognize Godwin’s unique and lasting role in Shelley’s thought was Paul Dawson’s *The Unacknowledged Legislator: Shelley and Politics* (1980), and his conclusions have been developed, in different directions, by Michael Scrivener and Timothy Clark” (190). For other comparison between Godwin and Shelley, see Pamela Clemit’s “Shelley’s Godwin, 1812-1817” (1993); Michael Demson’s “The Disobedient Disciple: Shelley’s Divergence From Godwin’s Guidance on History and Political Practice” (2008); and George Watson’s “The Reckless Disciple: Godwin’s ‘Shelley’ ”(1986). None of these texts compare *The Cenci* and *Caleb Williams* at any length. While Williams Marshall’s, “‘Caleb Williams’ and ‘The Cenci’” (1960), does address the fictions my project is concerned with, he limits his brief discussion to comparing Falkland and Beatrice. Interestingly, of all Percy Shelley’s works, Godwin found *The Cenci* most appealing. In a letter to Mary on March 20, 1820, he tells her: “I have read the tragedy of ‘Cenci,’ and am glad to see Shelley at last descending to what really passes among human creatures. The story is certainly an unfortunate one, but the execution gives me a new idea of Shelley’s powers.” (Kegan 272).

<sup>53</sup> Considering an entire study has been published speculating that Percy Shelley *really* wrote *Frankenstein* – John Lauritsen’s *The Man Who Wrote Frankenstein* (2007) – the fact that Shelley based his play on Mary’s translation of the Cenci family story is curiously overlooked.

Godwin-Shelley-Wollstonecraft family fictions, hoping to draw greater attention to the nature of gender, sexual crime, and issues of justice – one chamber of critical conversation that still echoes with relative silence.

## **XVI. FOUNDATIONS OF JUSTICE : SHELLEY AND HIS INFLUENCES**

Percy Shelley's poems and non-fiction prose offer a framework for his views on justice and suggest shared tendencies with the Godwin-Wollstonecraft-Shelley desire for reform. To begin, a brief survey of Shelley's poems reveals his frustration with criminal justice administration. From his better known *Queen Mab* (1813), *The Mask of Anarchy* (1819), and *Prometheus Unbound* (1820), to the less well known "To The Lord Chancellor" (1818), written in the later stages of a custody suit that he ultimately lost (Kohler 556), Shelley's poems make general critiques on justice administration. For example, the fairy in *Queen Mab* criticizes disparities in the justice system. She says "Those too the tyrant serve, who, skilled to snare/ The feet of justice in the toils of law,/ Stand ready to oppress the weaker still; And, right or wrong, will vindicate for gold,/ Sneering at public virtue, which beneath/ Their pitiless tread lies torn and trampled, where/ Honour sits smiling at the sale of truth" (*SPP* IV.196-201). Beyond emphasizing an inequitable distribution of justice, this section of Shelley's poem implies the law is actively misused and manipulated to benefit the powerful.

Shelley depicts the administration of justice negatively again in *The Mask of Anarchy* when the speaker identifies law as one of the corrupt agents of authority and directly calls out Lord Chancellor Eldon. When the speaker does speak positively of justice it is to address a fairer, more equitable future institution while simultaneously undercutting current practice in England: "Thou art Justice – ne'er for gold/ May thy

righteous laws be sold/ As laws are in England – thou/ Shield’st alike the high and low” (*SPP* 230). Shelley also considers different models of punishment, Melynda Nuss argues, in *Prometheus Unbound*. In Nuss’s article, “Prometheus in a Bind: Law, Narrative and Movement in *Prometheus Unbound*” (2007), she supports the notion that Shelley’s poetry reflects, and was invested in, criminal justice issues. She explains that “Writing in the middle of a century of criminal law reform, Shelley shared the reformers’ concern with the law’s ability to resolve conflicts and move forward” (416). We can see Shelley’s preoccupation with criminal justice in his poetry’s general attacks, which suggest imbalanced practices and unfair advantages based on wealth and power.

Beyond his poetry, several of his less discussed prose writings also provide indications of his interest in matters of justice, as Godwin’s and Wollstonecraft’s non-fiction prose had. One of his earliest direct comments on the criminal justice system occurs in his “Essay on the Punishment of Death,” which David Lee Clark places to the 1813-1814 period, although the date of the essay is unknown.<sup>54</sup> The basic argument of this essay is the elimination of capital punishment, but Shelley also articulates rationales similar to Godwin, Wollstonecraft, and Mary Shelley regarding the ineffectiveness of retributive punishment. Shelley echoes their notion that without consideration of repairing harm retribution further exacerbates criminal tendencies, rather than controlling or reforming such behavior: “It is sufficiently clear that revenge, retaliation, atonement, expiation are rules and motives so far from deserving a place in any enlightened system

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<sup>54</sup> Public executions were still common during Shelley’s lifetime. Gatrell describes that the 1832 Reform Act contributed to decreasing hangings, but states that most “most capital statutes were at last repealed in 1837” (9). He reminds us that leading up to these changes, executions were frequent: “twice as many were hanged in London in the thirty years 1801-1830 as hanged in the fifty years 1701-50 [281 hangings]. How easily this extraordinary fact has been forgotten – that the noose was at its most active on the very eve of capital law repeals!” (7). Shelley’s comments on public execution reflect his aversion to this continued practice.

of political life that they are the chief sources of a prodigious class of miseries in the domestic circles of society” (*Shelley’s Prose* 155). Further, he goes on to argue for a milder system of punishment, not only because it reflects better on the community that institutes it, but also because he believes it will actually reduce crime (*Shelley’s Prose* 157).

We also see evidence of Shelley’s concern for the disenfranchised and the legally abused leading up to his composition of *The Cenci* in his, “We Pity the Plumage, but Forget the Dying Bird”; Address to the People on the Death of the Princess Charlotte,” (1817).<sup>55</sup> Clark tells us this pamphlet, written under the pseudonym The Hermit of Marlow, was penned after visiting friends in London – among them William Godwin. The pamphlet compares the nation’s widespread mourning over the death of Princess Charlotte of Wales to the nearly non-existent reaction to the execution of three laborers involved in the Pentrich Revolution. While Shelley acknowledges the tragedy of the young Princess’s death and the value of communal mourning, he also draws attention to the need to mourn for public calamities of greater magnitude, such as “the wresting of old and venerable laws to the murder of the innocent” (164).<sup>56</sup> The pamphlet goes on to describe the imprisonment, seemingly unjust trials, and bloody, inhumane execution of Brandreth, Turner, and Ludlam – the three men executed for their involvement in the uprising (*Shelley’s Prose* 168). As with Godwin and Wollstonecraft, although admittedly

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<sup>55</sup> David Lee Clark reminds us that the “dying bird” portion of the title is from Paine’s *The Rights of Man* (162).

<sup>56</sup> A fuller account of the occasion for mourning, according to Shelley is as follows: “Men do well to mourn for the dead: it proves that we love something besides ourselves....There should be public mourning when those events take place which make all good men mourn in their hearts – the rule of foreign or domestic tyrants, the abuse of public faith, the wresting of old and venerable laws to the murder of the innocent, the established insecurity of all those the flower of the nation who cherish an unconquerable enthusiasm for the public good” (*Shelley’s Prose* 164).

to a lesser effect, Shelley's pamphlet directly addresses the public through political tracts that treat issues of legal injustice.

Finally, we also see criminal justice reform specifically addressed in two prose tracts unpublished during Shelley's lifetime. The first is "A Philosophical View of Reform" began just after publication of *The Cenci* but not published until 1920 (Clark 229). The essay advocates for gradual and peaceful political change and lays out specific measures to achieve more equitable and balanced conditions. Amidst his prescriptions for reform Shelley suggests, "We would make justice cheap, certain, and speedy, and extend the institution of juries to every possible occasion of jurisprudence" (249). He continues this call for more democratic and participatory justice processes in "A System of Government By Juries," also dated from around the time of *The Cenci's* composition, probably 1819-20 (Clark 262). This tract, published in *Athenaem* in 1833, defines Shelley's belief in the purpose of the law ("the good of the whole"), critiques what he describes as severe and unnecessary retributive outcomes ("in general, ten times more is apportioned to the victims of law than is demanded by the welfare of society under the shape of reformation or example"), and cites inequitable conditions of justice ("there is a vague but most effective favoritism in courts of law and among lawyers against the poor to the advantage of the rich"). On these matters his pamphlet parallels attitudes toward criminal law reform shared by Godwin, Wollstoncraft, and Mary Shelley.

Beyond his interest in justice reform and his concern for individuals legally marginalized by class, Shelley's writing also addresses gender disparities. Paul Foot discusses Shelley's aversion to women's oppression, noting Shelley's tendency to cast women in significant, revolutionary roles in his poetry. Devoting most of his discussion

to Shelley's representation of Cythna as a heroine seeking women's equality in *The Revolt of Islam* (1817), Foot also briefly mentions the Fairy Queen in *Queen Mab* (1813), Asia in *Prometheus Unbound* (1820), and Beatrice Cenci. He additionally acknowledges Shelley's attention to mistreated and abused women; he notes that in *Rosalind and Helen* (1817) Rosalind discusses her husband's physical abuse of her and her children, and in *The Revolt of Islam* Cythna describes her rape "in a verse which captures...Shelley's disgust for enforced sex" (121). My argument extends Foot's discussion by considering how Shelley calls further attention to women's mistreatment as victims of sexual crimes in *The Cenci*, an issue Foot mentions but does not develop.

Just as Godwin influenced Shelley's ideas about justice, Wollstonecraft influenced his ideas about gender. Foot explains that "Shelley's early letters are full of requests for Mary Wollstonecraft's books and letters. By the time he was twenty, he had absorbed them all" (103). Mary Shelley's reading list from 1814-1822 further supports Wollstonecraft's influence on Percy, indicating that Mary and Percy reread Wollstonecraft's prose and fiction repeatedly; she notes their reading of *Maria: Or the Wrongs of Woman* in 1814 (*JMS II* 684). Percy Shelley's dedication to Mary Shelley in *Laon and Cythna* (1817) lyrically reflects the esteem he had for Wollstonecraft when, referring to Wollstonecraft, his speaker says "[Her] life was like a setting planet mild/  
Which clothed thee in the radiance undefiled/  
Of its departing glory; still her fame/  
Shines on thee" (*Shelley's Poetry and Prose* 104). Despite Percy Shelley's well documented admiration of Wollstonecraft, few scholars have seriously investigated her influence on his fiction, particularly as it concerns *The Cenci*.

The dearth in attention to Wollstonecraft's influence can perhaps be partially explained in two ways. First, as Foot notes, "The Shelley cults which have grown up over the last hundred years have been dominated by men" (159). Outside of Foot, this male-dominated scholarship has been less quick to notice Wollstonecraft's significant effect on Shelley. Second, Shelley's personal decisions have deterred many from linking him in any way with advocating for women.<sup>57</sup> Recent scholarship, such as Susan J. Wolfson's chapter "'Something must be done': Shelley, Hemans, and the Flash of Revolutionary Female Violence" (2009), compares female characters in poetry by Percy Shelley and Felicia Hemans, and Kristine Johanson's brief and general discussion of Wollstonecraft's influence in her short article, "'Ever Holy and Unstained': Illuminating the Feminist *Cenci* Through Mary Wollstonecraft and Shakespeare's *Titus Andronicus*" (2007), indicate that this trend in scholarship might be changing. Nevertheless, Wollstonecraft's influence on Shelley in terms of criminal justice and sexual crime warrants further attention, as do the family's other texts that treat victims, offenders, community, and state roles in justice administration.

## **XVII. REPRESENTATIONS AND CRITIQUES OF JUSTICE IN *THE CENCI***

As Godwin, Wollstonecraft, and Mary Shelley do before him in their fiction, Percy Shelley represents biased and corrupt justice practices that fail to protect marginalized individuals in *The Cenci*. While Shelley continues the family's preoccupation with critiquing justice processes, he shifts the representational mode from novel to historical

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<sup>57</sup> For an articulation of this reason see Anne K. Mellors "Sexuality and Feminism in Shelley by Nathaniel Brown" (1980). Her book review faults Brown's study (a discussion of Shelley's theory of sexuality) for failing to acknowledge Shelley's relationships with women in a book purportedly about Shelley's feminism. For more on the contradictions between Shelley's theory and practice towards women, see Paul Foot's "Feminism," a chapter within his larger study. I limit my interest in Shelley's relationship with women to his textual conversations with Wollstonecraft and Mary Shelley as well as his literary representation of gender and sexual crime.

drama. Shelley's choice to write an historical drama in order to draw attention to contemporary problems was not uncommon in the early nineteenth-century and relates to England's repressive climate. Jeffery Cox helps to contextualize Shelley's choice in his chapter "The French Revolution in the English Theater" (1990), in which Cox discusses the tendency of playwrights to dramatize historical events during this era. Cox explains how fear of government censors as well as fear of actually inciting revolt, prompted authors to represent revolutionary themes in allegedly more subtle, less threatening terms by cloaking current problems in historical, neoclassical, and Gothic dramas (38). As Cox's explanation helps reveal, Beatrice's tragedy allowed Shelley to address disparities within his justice system, but he did so in a less realistically representational or overt way. *The Cenci's* different setting (Italy), different time (1599), and different political system (Papal state) displaced the play's direct critique on English institutions, while still drawing attention to contemporary problems. While Godwin, Wollstonecraft, and Mary Shelley chose the novelistic form to magnify issues of justice for a wide audience, Shelley believed a drama, because of its public performance potential, would help accomplish this goal.<sup>58</sup>

Shelley begins his critique in *The Cenci* by representing imbalanced justice practices. He first suggests that wealthy and powerful individuals benefit from inequitable processes. Already within the opening lines of the play, Camillo discloses that Cenci is avoiding punishment for murder by bribing church officials with his land (I.i.1-

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<sup>58</sup> Shelley articulates his intention to reach a wide audience with *The Cenci* in his letters to his publisher, Charles Ollier. The first, dated September 6, 1819, says: "I shall also send you another work [*The Cenci*], calculated to produce a very popular effect" (*Letters of PS* 116). The second, dated March 6, 1820, states: "'Cenci' is written for the multitude, and ought to sell well" (*Letters of PS* 174). Although, much to Shelley's disappointment, the play was never performed, it was his most popular publication during his lifetime. Stuart Curran explains that "Except for the pirated version of *Queen Mab*, this was Shelley's only volume to achieve a second edition during his lifetime" (5).

2). In lieu of prosecution, the Cenci gives the Papal state one third of his possessions. Just as Falkner, Tyrrel, and Victor benefit from their status, Cenci – although more drastically – reveals the way that wealth and power can influence who is punished and for what crimes; the Papal state decriminalizes offenses in order to serve its own corrupt needs, thereby failing to punish the Cenci’s violent offenses.

Next, Shelley suggests that the system may be closed or prohibited to those with less power or resources; Beatrice demonstrates this limited access when her only recourse for protection, a direct petition to the state, is thwarted by Orsino. Shelley also underscores the state’s negligence in protecting certain victims from certain crimes when the Cenci prevents outside intervention by characterizing his abuses against his family as “dull domestic quarrels” (I.iii.163); first, as Godwin had in his representation of Tyrrel’s abuses against Emily, and Wollstonecraft had in her depictions of Maria and Jemima, Shelley emphasizes the criminal justice system’s (and the community’s) reluctance to protect women considered the property of other men. Shelley additionally suggests the inefficiency of criminal justice administration when the state official comes to make his arrest only after the Cenci has succeed in abusing and violating Beatrice. Based on the Cenci’s corrupt relation with the Pope, Shelley’s play implies that the state intervenes on behalf of their own interest, not to protect disenfranchised victims or their families.

Finally, Shelley represents the legal system’s abuse of power in justice processes; Marzio, Beatrice, Giacomo, and Lucretia are all physically tortured in order to coerce their admissions of guilt. Despite their disclosures, this process does not induce truth during the trial. First, Marzio withdraws his statement of Beatrice’s guilt because she uses her family’s status to pressure him into taking full blame. Her effect on Marzio

suggests how power dynamics can distort honest disclosures and underscores the significance of wealth and social position, even among individuals who share a disenfranchised status. Second, Beatrice never confesses to her role in the murder, even given her impending execution and torture. Beatrice's silence suggests the inefficiency of punitive or coercive measures to compel truth. Third, and perhaps most importantly, the trial never reveals the Cenci's crime against Beatrice – the violation which motivated the murder. The state's emphasis on closure regarding the offense against the Cenci, but its dismissal regarding the offense against Beatrice (even though the two crimes are inextricably linked), suggests the system's failure to acknowledge and address sexual crimes.

#### **XVIII. UNACKNOWLEDGED VICTIMS: SILENCE AND SEXUAL CRIME**

Shelley returns to and extends Wollstonecraft's preoccupation in *Maria* when he represents the justice system's failure to acknowledge and address sexual violence. Like Wollstonecraft, Shelley draws attention to the gravity of sexual crimes and their traumatic effect on victims. He builds on Wollstonecraft's representation by using lyrical language to underscore both the horror of a sexual violation and the challenge of articulating it. Reflecting shifts in literature and criminal justice since Wollstonecraft wrote *Maria*, Shelley's vehicle and his focus is language. His emphasis on language in form and content reveals barriers that prevented many nineteenth-century victims of sexual crime from achieving justice – legal requirements, medical definitions, and cultural imperatives on women's chastity which all revolved around how, and whether, a survivor was able to express the crime and obtain redress. Shelley overturns assumptions about maintaining these barriers in his treatment of Beatrice.

First, like Wollstonecraft, Shelley underscores the horror of sexual crimes and the challenge of articulating them. While Wollstonecraft represents Jemima's abuse, trauma, and dismissal in the direct, concrete language of her Enlightenment prose, Shelley represents Beatrice's abuse in the lyrical language of his Romantic era. Rather than rendering the trauma more beautiful or poetic by this shift in style, his vivid, descriptive language invokes repulsive associations – drawing attention to the violence of the crime without actually naming it. Previous to the offense against Beatrice that occurs between Acts II and III, Shelley portrays Beatrice as outspoken about the Cenci's wrongs. At the start of Act III, however, Shelley underscores the trauma that has occurred when Beatrice speaks in fragments of sight, smell, and touch that suggest her disoriented state, saying, "The beautiful blue heaven is flecked with blood!/ The sunshine on the floor is black! The air/ Is changed to vapours such as the dead breathe in charnal pits!...There creeps a clinging, black, contaminating mist/ About me...it glues my fingers and limbs to one another" (III.i.13-19). Shelley conveys Beatrice's horror and revulsion here, after the Cenci's violation, in paradoxical language that shuns everyday sensory experiences. Her descriptions call on each of the senses to invoke images of contamination, unnatural inversion, and morbidity, which suggest the horror of sexual violation but never name the offense.

Beatrice continues with this repulsive imagery, describing "I thought I was that wretched Beatrice/ Men speak of, whom her father sometimes...pens up naked in damp cells/ Where scaly reptiles crawl, and starves her there,/ Till she will eat strange flesh" (III.i. 43-7). While this gothic imagery suggests a vision that might be more realistically imaginable than the previous, Shelley implies the challenge of articulating the act through

Beatrice's vivid and bizarre account. He urges his audience to associate Beatrice's experience with torture, isolation, helplessness, violation, and forced unnatural action. His direction not only creates negative associations with the crime, but it also gives rise to the involuntary emotions of both revulsion for the act and sympathy for Beatrice's struggle to verbalize it.

Second, Shelley follows and extends Wollstonecraft by dramatizing the shock and suffering an individual may experience after an attack. He links Beatrice's struggle to verbalize her experience with her traumatic symptoms; like Jemima, she dissociates, represses, and denies the offense. The fragmented and metaphoric manner in which Beatrice describes her trauma suggests a dissociative – or alternate – state of consciousness. This condition parallels behavior that psychologist Joyce Sese Dorado identifies in contemporary victims of incest. Dorado explains, "The traumatic first memories of these participants were intrusive...[they] were not merely visual, but rather packaged with other sensations – auditory, tactile, and kinesthetic" (106). Shelley anticipates this modern clinical description of a victim's behavior when Beatrice draws on sight, smell, and touch to describe her experience in non-referential images.

Shelley also depicts symptoms of trauma, which Wollstonecraft had implied with Jemima, when Beatrice alternates between repressing the experience and blaming herself for what happened. Disturbed by her intrusive memories, she tries to detach herself from what happened. She says, "Misery has killed its father: yet its father/ Never like mine...", "no, it cannot be!" (III.i.50), and "Yet speak it not:/ For then if this be truth, that other too/ Must be a truth, a firm enduring truth...I have talked some wild words, but will no more" (I.i.60-3). Shelley extends Wollstonecraft's representation of sexual

trauma and again anticipates modern notions of traumatic symptoms in Beatrice's response. For example, in their recent article about Post Traumatic Stress Disorder in sexual assault survivors, Cynthia Najdowski and Sarah Ulman support what Shelley portrays: they explain that repression and withdrawal are common, if maladaptive, post-assault coping mechanisms for victims of rape (44). Shelley dramatizes a further coping mechanism adopted by sexual crime survivors when he shows us how, for Beatrice, this repression turns into self blame (Najdowski and Ulman 44). Beatrice asks, "What have I done? Am I not innocent? It is my crime...Oh, what am I? What name, what place, what memory shall be mine?" (I.i.70-75).

In order to avoid this blame, Shelley depicts how Beatrice follows her self-doubt by denying her experience. She abandons her previously concrete, vivid imagery of torture and violation, instead adopting an increasingly indiscriminate, fading vision. She asks, "What are the words which you would have me speak? I, who can feign no image in my mind/ Of that which has transformed me. I whose thought/ Is like a ghost shrouded and folded up/ In its own formless horror" (III.i.108-110). In Beatrice's response Shelley dramatizes how, in the interest of self-preservation, victims of crime may transition from horror and self-blame to denial. Najdowski and Ullman explain that "women who think they are responsible for their ASA [Adult Sexual Assault] experience may have more difficulty coming to terms with their assault and may be more likely to engage in strategies such as denial or disengagement to avoid persistent self-blaming cognitions" (45). Shelley dramatizes the stages of traumatic memory that many rape victims undergo in Beatrice's struggle to articulate and come to terms with her experience. He underscores the role language plays in allowing victims to name, begin recovering from,

and help others to understand the consequences of a sexual violation; whereas Jemima's receptive community eventually helps her to move toward healing by allowing her to expose and reclaim her experience through language, Beatrice retreats into silence and denial.

Beatrice's failed struggle to verbalize her experience and her subsequent retreat into silence reflect issues confronting victims of sexual crime during Shelley's era, particularly concerning language expectations of the criminal justice system. In order to prosecute or convict cases of sexual crime, early nineteenth-century survivors had to fulfill the legal language requirements of the criminal justice system. Anna Clark explains that an increased emphasis on medical and legal discourse made proving rape difficult and appropriated victims' opportunity to testify in their own terms during the justice process: women had to prove emission by their offender until 1828 and "[b]y the second decade of the nineteenth century, assize depositions...reveal that magistrates apparently asked women not only if the assailant had ejaculated but also how far he penetrated, how he moved, and the duration of the act" (61). Clark explains that the problem with these legal conventions, aside from the burden of proof, intimate details, and technical language such conditions demanded, was that sexual violence perpetrated against women was defined in narrow terms. Such narrow terms meant that women were limited in their ability to express and prove their experience: a victim struggling to find language to describe the offense was expected to speak about it in a way that met the legal needs of the court. By dramatizing Beatrice's challenge to articulate the crime, Shelley suggests that victims of trauma disrupt and exceed expectations of normative

language or concrete narrative testimony; he questions the medical and legal language required to express and prove sexual trauma.

Clark explains that language constraints also meant that the justice system failed to recognize equally traumatizing sexual crimes when victims could not specify emission (62). By allowing Beatrice to articulate her experience in metaphoric and fragmented language while still acknowledging the existence and trauma of the crime, Shelley defies the specificity of this medical definition. He represents the Cenci's act as a violation and a serious offense without demanding Beatrice fulfill a set of rigid medical criteria detailing "how far he penetrated, how far he moved, and the duration of the act" (Clark 61). Because Beatrice's expression of her experience makes clear she has been seriously harmed, but does not clinically or legally spell out the Cenci's violation, Shelley perhaps suggests that the justice system broaden how it defines sexual crimes – in order to allow for potentially less precise terms in describing an offense and to acknowledge violations that do not involve penetration.

Further, Shelley's representation draws attention to the limits of legal and medical language requirements for sexual crime but also protects Beatrice's virtue for a popular audience; he allows Beatrice to articulate the act and emphasize its horror without sacrificing conventions of public morality or condemning Beatrice for "knowing too much." Clark explains that another barrier of medical-legal language was that if a woman was able to describe the crime in her own terms, but not in the language or manner required by the law, she was also condemned for revealing too much sexual knowledge. For magistrates, such carnal knowledge might prove the victim was not chaste, and therefore not violated; Clark explains "If the victim of rape could testify that emission

had occurred, her frankness branded her as immodest, and her assailant as less culpable” (63). Shelley protects Beatrice against this accusation, and also mistakenly believes he makes the play performable, by articulating the act in figurative language.<sup>59</sup>

Although Shelley attempts to preserve the perception of Beatrice as virtuous, he also exposes problems with this cultural emphasis on female chastity. In the silence that follows Beatrice’s initial response, Shelley reveals how cultural expectations of female chastity prevent victims from disclosing crimes against them in order to sustain a climate of silence. For example, when Orsino instructs her to “let the law/ avenge,” Beatrice responds:

If I could find a word that might make known  
The crime of my destroyer; and that done  
My tongue should like a knife tear out the secret  
Which cankers my heart’s core; aye, *lay all bare*  
*So that my unpolluted fame should be*  
*With Vilest gossips a stale mouthed story;*  
*A mock, a bye-word, an astonishment: –*  
If this were done, which never shall be done,  
Think of the offender’s gold, his dreaded hate,  
And the strange horror of the accuser’s tale,  
*Baffling belief, and overpowering speech;”* (III.i. 155-65 emphasis added)

Beyond challenges of articulation, Beatrice’s response reveals that she avoids legal redress because, first, she fears that her character will be ruined and, second, she fears she will not be believed. She implies that by revealing her father’s rape, her and her family’s

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<sup>59</sup> Shelley was aware of the obstacle that the subject matter of his play posed to getting it performed. Nonetheless, his letters indicate that he thought he had portrayed Beatrice’s incest in a sensitive and culturally acceptable way. In his letter from July 20, 1819 he tells Thomas Love Peacock that “I have taken some pains to make my play fit for representation...I send you a translation of the Italian Mss. on which my play is founded; the chief circumstance of which I have touched very delicately; for my principle doubt as to whether it will succeed as an acting play hangs entirely on the question as to whether any such thing as incest in this shape however treated wd. be admitted on the stage – I think however it will form no objection, considering first that the facts are matter of history, & secondly the peculiar delicacy with which I have treated it” (*Letters of PS* 102). Despite Shelley’s attempts at delicacy, the play was rejected by Covent Garden. Thomas Harris, the manager, declared himself “morally outraged” by the play’s content (Curran 4).

reputation, not her father's, will be tarnished. In her response, Shelley underscores the immense risk that public shame poses for victims when chastity is one of the only possessions culturally granted to women. Disclosing a sexual crime not only presents the risk of not being believed – as Clark's study demonstrates – it also bares the risk of losing the very thing that gives you value and secures your worth in the future.

Clark explains that increased attention to protecting chastity during the early nineteenth century affected women by reinforcing silence in cases of sexual crime: “more and more, women hesitated to report sexual assaults, fearing rape would be seen as a taint upon their reputations” (63). The likelihood of being doubted, not achieving justice, and losing your social value meant that disclosing a sexual crime usually led to more suffering for the victim, rather than leading to redressing and repairing harm. Why seek legal measures, Beatrice asks, when “we the victims, bear worse punishment/Than that appointed for their torture?” (III.i.192-3). Beatrice's duty as she understands it – for her own sake as well as her family's – involves concealing the atrocity committed against her. Shelley suggests that a system that privileges chastity by punishing victims through disbelief and shame reinforces this duty and encourages silence.

Shelley's drama also overturns several other assumptions about chastity that fostered and maintained such a climate. First, because his character is an innocent, virtuous, aristocratic woman, he dispels myths about these traits preventing sexual crime. While Wollstonecraft underscores the greater risks and fewer protections laboring class women faced regarding sexual crimes, Shelley underscores that sexual crime is not a choice; a woman's character neither instigates nor protects against sexual violence. Second, because Beatrice is violated by her own father in her own home, Shelley dispels

the nineteenth-century notion that chastity can be protected or maintained by keeping women within the domestic sphere. Third, by dramatizing the degree of harm caused to Beatrice, he emphasizes that such abuse is not merely a private matter but an issue of public concern. Finally, he challenges the notion that public morality can be preserved or women's suffering can be contained through silence. Beatrice's response to such repression explodes this fallacy.

#### **XIX. PROCESSES AND OUTCOMES OF INJUSTICE: CRIMINAL EVOLUTION AND OFFENDER ACCOUNTABILITY**

Beatrice's evolution from disenfranchised individual (Caleb), to unacknowledged victim (Jemima), to extralegal agent of justice (the creature) follows the projection of the characters within Godwin, Wollstonecraft, and Mary Shelley's fictions. As their texts gradually evolve to suggest, if individuals are marginalized and wrongs committed against them are ignored, then criminal behavior and violent repercussions are the likely consequences. Shelley emphasizes the force of this mistreatment since, like the creature, Beatrice is virtuous and well intentioned until she is pushed to react by horrific conditions, unnatural acts, and abuse. While *Frankenstein* imagines the consequences of this evolution as the murder of innocent victims (William, Justine, Clerval, and Elizabeth), *The Cenci* imagines the consequence as the murder of a violent, tyrannical perpetrator. When Beatrice responds by arranging for her father's murder in order to stop his unmitigated abuse from continuing, Shelley's play begs the question, was justice achieved?

In response to this question, critics and readers cannot agree. Shelley's play provides no easy answer – particularly given his preface, which seems to condemn Beatrice for her action. *The Cenci's* preface tells us that:

Undoubtedly, no person can be truly dishonoured by the act of another; and the fit return to make to the most enormous injuries is kindness and forbearance, and a resolution to convert the injurer from his dark passions by peace and love. Revenge, retaliation, atonement, are pernicious mistakes. If Beatrice had thought in this manner she would have been wiser and better; but she would never have been a tragic character. (240)

Shelley's emphasis on "kindness and forbearance" suggests that Beatrice should have patiently and compassionately waited as her father threatened repeated abuse – an unlikely proscription given how the play depicts the grave failure of such a passive response.

Critics who have tried to reconcile this contradiction – the message in his preface from the content of his play – have not reached a consensus regarding justice. Some argue that Shelley's preface implies Beatrice was wrong to seek her own justice. For example, there is Robert Whitman's most often cited response: "in one sense Beatrice's murder of her father can be condoned, and yet we must not let our sympathy for her suffering or her humanity blind us to the fact that she is *wrong*. In Shelley's eyes, and, he intended in ours, her act was a 'pernicious mistake'" (251). Others, such as Laurence Lockbridge, suggest that despite Shelley's intentions in his preface, his play seems to imply that perhaps Beatrice "overrides the question of culpability." Lockbridge explains, "Beatrice becomes evil without having been culpable. His statement in the Preface...must be regarded as a wishful misreading of his own play. *The Cenci* portrays a world so evil that it can tragically infect the innocent" (98). Even critics who put aside the preface and reserve judgment against Beatrice for the murder, seem to turn against her because during her trial she appears dishonest and manipulative. Margot Harrison explains that

Critics agree that Beatrice Cenci turns readers and spectators against her in the fifth act, where, under arrest for the murder of the father who raped her, she undertakes to save herself by lying about her role in the crime...Worse still, perhaps, Beatrice fails to make the audience a party to her deceit...she does not expose and deplore her own hypocrisy in soliloquy. (188)

In this reading, Harrison describes how many readers measure justice less by Beatrice's culpability in committing the crime, than by her dishonesty in refusing to admit to it.

Finally, other critics have pointed out that, whether or not we are concerned with Beatrice's guilt or innocence, she is punished for an act she does commit; Michael Kohler states this perspective: "Though brutal, the court is nonetheless justified in executing Beatrice, for she did murder her father" (587).

But in light of the restorative visions forwarded by the Godwin-Wollstonecraft-Shelley fictions, and in light of the climate of silence surrounding sexual crimes that Shelley depicts in his play, perhaps our emphasis should be different. First, rather than urging his audience to agree on guilt or innocence, perhaps Shelley urges us to look at the process used to determine justice. If justice is measured in part by the level of truth achieved, then Beatrice's silence suggests we examine the conditions created to encourage disclosure. In the justice process he dramatizes, Shelley reveals that for a nineteenth-century victim of sexual crime the conditions for disclosure encourage partial truths. Second, rather than urging his audience to focus on who is punished and how severely, perhaps Shelley urges us to look at the outcomes that justice processes achieve. If justice is measured in part by the degree of harm restored, then Beatrice's refusal to admit to her part in the murder highlights how repressive processes fail to achieve accountability or provide healing. Her actions outside of the justice system suggest that

victims may pursue their own drastic outcomes if they are denied adequate recognition and redress within state structures.

First, Shelley depicts how Beatrice's justice process obtains partial truths. During Beatrice's trial for her father's murder, the criminal justice process is not concerned with the Cenci's violation of Beatrice, which motivated her crime of murder. The climate of silence and repression surrounding sexual crime, which Shelley dramatizes in the first four acts of the play, is maintained during Beatrice's justice process. Young-ok An explains this void, "while such a heinous crime is easy for the Father to commit, it has no name and thus no appropriate channel to be exposed and prosecuted" (10). The justice process not only overlooks Beatrice's motive in dismissing the rape, it likewise overlooks its own failure to protect Beatrice or prevent the rape.

The trial reveals that the justice system wants only the facts of the murder, not the facts of the crime committed against Beatrice. The system demands a confession, but does not necessarily demand the whole truth. When the judge asks Beatrice, "Art thou not guilty of thy father's death?," she replies, "Or wilt thou rather tax high judging God/ That he permitted such an act as that/ Which I have suffered, and which he beheld;/ *Made it unutterable*, and took from it/ All refuge, all revenge, all consequence, But that which thou has called my father's death?" (V.iii.79-84 emphasis added). Beatrice response conveys the demands of the court: there is no other concern or crime beyond Cenci's murder. Because the patricide threatens their authority, but Beatrice's rape represents nothing more than an ugly inconvenience, the justice system attempts to seek truth and justice according to its own agenda.

Shelley suggests that justice system's main goal is to reach closure: the state's focus is to find and publicly punish the individual who committed the murder of a powerful man – the crime that threatens institutional stability the most. Beatrice knows she cannot confess to the rape, which prevents her from confessing to the murder, but she also knows the court needs to maintain its legitimacy. Because the truth of her experience can never be disclosed, Beatrice offers the justice system her best attempt at honesty: she acknowledges the murder, by means of Marzio, but she denies her own responsibility by means of her silence. Shelley's play implies that her silence is a consequence of the justice system's conditions for truth: her half truth reflects their half truths. Beatrice reveals only so much as is necessary to protect and legitimize her family, just as the trial reveals only so much as is necessary to protect and legitimize the justice system. Shelley draws attention to the failure of justice processes that repress certain abuses in order to forge toward finality and closure. On this point, he echoes Godwin, Wollstonecraft, and Mary Shelley's representations of crimes against the disenfranchised that are dismissed for the sake of closure: it is easier to find Caleb, the Hawkins, Jemima, Maria, Justine, and the creature guilty (even of crimes they don't commit) than it is to acknowledge the layers of offenses first practiced against them.

Second, Shelley draws attention to the element of accountability that both restorative and punitive justice systems demand. The half truths Beatrice's trial produces reveal that in order to achieve accountability criminal processes need to make room, and create conditions, conducive to hearing even those offenses they wish to suppress. Shelley's justice system (and audiences alike) demand and expect from Beatrice a full confession, to admit that she is wrong and to disclose the truth, but in eagerness for

honesty and justice, the tendency to deny, suppress, and forget the terrible crime she has survived is overlooked. Acknowledging rape and incest is uncomfortable and disturbing, and it may be much easier to neatly finalize a crime such as Beatrice's by finding an individual solely responsible without having to admit to larger problems. Shelley's play responds that in a restorative process, taking responsibility for one's actions can perhaps only occur when the system and the community take responsibility too – for their failure to listen, prevent, and protect. Shelley's play implies that the task of being accountable is shared.

The desire to renounce sexual crimes and to silence their existence was a reality of *The Cenci's* historical context: Shelley's play was never performed during his lifetime. Before outright dismissing it, many of his reviewers first expressed shock, offense, and denial regarded the “unnatural” or “immoral” acts his work depicts (An 14-15). The topic of rape, especially incestuous rape, was a topic to be muted, regardless of the forum. Anna Clark's study reveals that the courts “began to suppress the publication of transcripts of sexual crimes...presumably [because], judges wished to protect the public from exposure of such ‘offensive’ testimony” (17). Even newspaper accounts stressed the victim's contribution to the crime, rather than her suffering, and substituted moderate language in order to lessen the severity of the offense (Clark 19). A climate of suppression was normal, even encouraged, to silence and ignore the reality of sexual crimes.

Modern day response continues to reflect the impulse to silence the issue of Beatrice's abuse. The critical dispute regarding the veracity of the historical Beatrice Cenci's incest further demonstrates this impulse. For example, Barbara Groseclose

argues in “The Incest Motif in Shelley’s ‘The Cenci’” (1985) that Shelley “introduced the act of incest” to serve as a symbol (225). Groseclose’s belief that Shelley “introduced” the incestuous rape because no historic account verifies consummation (225) overlooks the harm and sexual trauma Francisco Cenci caused his daughter and replicates nineteenth-century desires to deny sexual crimes without quantifiable proof of penetration. Despite this desire, Truman Guy Steffan maintains in “Seven Accounts of the Cenci and Shelley’s drama” that four of the seven accounts that remain “are crudely specific about the father’s gross humiliation of his wife and daughter...[and] All accounts state that by threats and force he tried to violate...Beatrice” (607). The account which Shelley purportedly used as a source for his play “The Relation of the Death of the Family of the Cenci,” which Mary transcribed from Italian in 1818, states that Francisco Cenci tried to “debauch” his daughter (Steffan 607), and even Groseclose acknowledges that Shelley “seemed to truly believe in the accuracy and authenticity” of Mary’s transcribed version (223). Fact or fiction, the veracity of Beatrice’s sexual abuse remains a focus – not the crime and the trauma it exposes. Shelley’s play suggests that until the offense first committed against Beatrice is recognized and acknowledged, the demand that she take responsibility for her part in the murder is inequitable and ethically nebulous.

## **XX. RESTORATIVE JUSTICE?**

But while *The Cenci’s* violent and tragic content seems to convey more of a critique than a model for positive change, Shelley’s play is restorative on several levels. Shelley does not represent restorative processes in the content of his play, as Godwin and Wollstonecraft had in their fiction, but he advocates for the disenfranchised and puts forward an alternative justice model. First, by treating a historic injustice, *The Cenci* is

restorative: it looks back in order to tend to the present and reform the future. Stephen Berhendt explains that,

*The Cenci* stands as Shelley's argument by analogy about the English nation's need to learn by studying the tragedies of fallen nobility of mind and spirit that the past furbishes, and to choose for itself the only acceptable alternative to the downward spiral of violence: not revolution, but reform of the entire inhering structure of society, its assumptions, and its institutions...To the historian's task of recounting the past, however, *The Cenci* adds the poet's concern with influencing the present and shaping the future. (215)

While Berhendt argues that *The Cenci* was largely aimed at tempering motivation for reform by exposing Beatrice's violence, Shelley's play might also recuperate Beatrice for reasons beyond slowing revolutionary action. In Shelley's act of recounting the past in order to influence and shape the future, his recuperation is restorative.

When Shelley recovers Beatrice's story from history he performs a restorative act. Desmond Tuto explains that "the past, far from disappearing or lying down and being quiet, has an embarrassing and persistent way of returning and haunting us unless it has in fact been dealt with adequately" (28). By reconstructing and fictionalizing Beatrice's story in a way that remembers the crimes against her and records her suffering, Shelley advocates for marginalized victims whose stories have been silenced by history or appropriated by popular myth. He underscores the significance of recalling past injustice in order to prevent repeating it and the significance of recuperating marginalized voices in order to restore their value. The collaborative nature of his project reminds us of the communal action of restorative processes. He draws on his family's ideas about justice to arrive at his own understanding, he enlists the help of Mary Shelley to translate *The*

*Relation* and discuss his tragedy,<sup>60</sup> and he engages the audience to witness and interpret his drama.

Second, *The Cenci's* form contributes to the Godwin-Wollstonecraft-Shelley discussion of justice, particularly in terms of the inclusive and participatory conditions desirable for restorative processes. Each of the family's fictions develops this notion; in Godwin's *Caleb Williams*, Caleb narrates his first-person account as a disenfranchised individual falsely accused of a crime. In Wollstonecraft's *Maria*, Jemima provides the first-person testimony of a marginalized victim. In Shelley's *Frankenstein*, a witness (Walton), a victim (Victor), and an outcast criminal (the creature) testify to their experiences within the structure of a frame narrative. Percy Shelley's *Cenci* goes furthest in employing a form that offers the most opportunity for individual agency and participation: the victim, the accused, the community, and the justice system each perform a part. The novel's structure, which limits characters' actions by containing them within the bound pages of a text, is abandoned in favor of a dramatic rendering, which allows individual characters to physically act.

His form is also more participatory in terms of the audience. Readers become audience members – present, engaged, and sharing the fiction together, both as it unfolds before them and as they leave the theatre to discuss individual interpretations and implications of their collective experience. By crafting a play that dramatizes legal processes for a popular audience, Shelley uses the stage as a forum to educate citizens;

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<sup>60</sup> Mary Shelley tells us in her 'Note on *The Cenci*' that "This tragedy is the only one of his works that he communicated to me during its process. We talked over the arrangement of the scenes together" (*Novels and Works of Mary Shelley* 283). Like Godwin, Mary Shelley admired *The Cenci* more than any other work by Percy. She explains in the 'Note' that "The Fifth Act [the trial] is a masterpiece. It is the finest thing he ever wrote, and may claim proud comparison not only with any contemporary, but preceding poet" (286).

Simon Goldhill explains that, dating back to Greek drama “the theatre was regarded as a citizen’s duty, privilege and requirement. This sense of theatre as a civic act is enforced and repeated by statements that poets are ‘the teachers of the people’” (67). Shelley attempts to put his theory, that “poets are the unacknowledged legislators of the world,” into practice in *The Cenci* by dramatizing a legal trial in order to inform and engage citizens in civic issues of justice. Further, the narrative choices Shelley makes in writing his drama draw attention to the rhetorical relationship between law and literature.<sup>61</sup> *The Cenci* suggests that shared concerns between literature and law may reach beyond subject matter or even parallels between juries and audiences; his dramatic form raises rhetorical and narrative questions that help us reflect on criminal justice administration and practice.

His dramatic form also raises questions about the subjects of our criminal processes. In our justice system, he asks: Who are the actors? Are our protagonists judges and lawyers or victims and offenders? Do we privilege some roles more than others or do we attempt to empower each with some level of agency? What role should the community play? He also raises questions about legal discourse, his play asks: What about our script? Is it dominated by silence or speech? Is the language common or specialized? Does it prioritize crimes against the disenfranchised as much as crimes against the wealthy and powerful? Does it make space for traumatic, unsettling crimes even when they make the audience uncomfortable?

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<sup>61</sup> The relationship between literature and the law is also an ancient part of the Western literary tradition. Paul Cartledge explains that, since the inception of Western drama, “a good case can be made for there having been a productively dialectical relationship between Athenian drama and lawcourt procedures” (15). Cartledge discusses this relationship in terms of writers who wrote speeches for tragedies as well as legal clients, overlapping themes, and “the tragedians’ dramatic exploitation of technical legal language” (15). As I suggest, Shelley’s play revisits this relationship.

His plot raises questions about the method of our processes and the purpose of our outcomes: Do criminal procedures lead toward certain, contained finales or ambiguous, messy conclusions? Are they action or dialogue based? Do they favor retributive or restorative resolutions or do they seek to accommodate some hybrid of both? Do they end in tragedy? His choice of genre and his dramatic staging raise questions about the forums we choose for justice: are they open and public or exclusive and intimate? Are they contained and aloof or fluid and accessible? Who sits in our audience and what do we require of them? Should they pass judgment, acknowledge and witness, or leave and perform some action? If Shelley's play seems in many ways to raise more questions than answers, audiences benefit. These questions give readers tools to help us reflect and engage with literary works and judicial practice alike. They ask us to consider not only, "how is justice being performed in this text?," but moreover, "how is justice being performed in our communities?"

## XXI. CONCLUSIONS

*The Cenci* makes a plea for a change in nineteenth-century justice processes, and explodes constraints imposed by concerns over public morality, by representing the incestuous rape of Beatrice Cenci and thereby underscoring the existence of a sexual crime. Like Wollstonecraft's novel, it draws attention to the trauma of sexual assault, but it also emphasizes the challenges of articulating this trauma in a system or culture that demands chastity and a contained, authorized language in which to express it. In depicting the damaging effects of silencing marginalized individuals and providing no opportunity for recognition, his play replicates his family's texts by considering the circumstances that contribute to criminal behavior, but it also extends their consideration of justice. He complicates the accountability and remorse for which *Frankenstein* and

*Falkner* seem to advocate by considering how silence imposed by the justice system and the wider culture makes such accountability impossible. Finally, though the content of *The Cenci* elides restorative representations, the form does not. The choices Percy Shelley makes regarding narrative voice and dramatic representation embody an even more active form than Godwin, Wollstonecraft, or Mary Shelley. This form endorses an interactive, democratic model that grants victims, offenders, and community the opportunity to participate in processes and outcomes.

But Percy Shelley's play is important today not only because of its literary merit, or the way it advocates for marginalized individuals, or even because it helps to deepen our understanding of historic debates about criminal justice reform. Shelley's play is also important because, just as Godwin, Wollstonecraft, and Mary Shelley's texts also do, his work engages in issues of contemporary justice. In attempting to respond to the questions that Shelley's play raises, I had to look no further than my own local paper to find that, as Gina Barton and Becky Vevea report on July 6, 2010 in *The Milwaukee Journal Sentinel*, "Rape victims say police failed them: Chief defends 'complex' sex assault investigation."

Barton and Vevea's article describes the abuse that convicted offender Gregory Tyson practiced against women, many of them prostitutes or drug users, over the course of almost twenty-five years. It reports how in 2007 Tyson was charged with 32 offenses, including kidnap, sexual assault, and the murder of seven women. It describes that following his conviction, three victims filed a complaint against the Milwaukee Police. The women's complaint alleges that when they reported Tyson's abuses against them –

including repeated rape, beatings, and torture – the criminal justice system ignored and then dismissed their violations.

In light of the nearly two hundred years that have passed since Shelley wrote *The Cenci*, Tyson's predatory focus on vulnerable victims is shocking and disturbing, but additionally upsetting is the persistent suggestion that disenfranchised individuals continue to be dismissed by the criminal justice system, potentially because of the nature of the crime or the status of the individuals involved.<sup>62</sup> As the article's title articulates, the allegations in the complaint are currently under investigation and misconduct by the police has not yet been substantiated, but Chief Flynn's response to the allegations leaves readers of Shelley, and neighbors of these victims, with an aching, sinking feeling. The *Journal* reports the following portion of Flynn's statement:

'There is no way that the non-specific, generalized allegations in the charging document can be substantiated. Certainly we do not approve of discourteous behavior on the part of our officers but we note the 32-count charging document certainly indicates that the Milwaukee Police Department took very seriously the victims' reports of crime,' the statement says.

'The allegations, without specific dates and times, contained in the complaint are not statements of fact - it doesn't mean the assertions are true,' the statement says. 'We want to take every opportunity to interview those complainants who feel they were ill-served by the Milwaukee Police Department. We believe, as we did with the victims in the case of serial killer Walter Ellis, that the status of the victims had no bearing on the investigation.' (Barton and Vevea)

Flynn's statement reveals several things about progress towards victims of sexual crime in the justice system since Shelley wrote *The Cenci*. Flynn's pledge to investigate is positive; it reflects that many local justice systems register criticisms seriously, and follow up is required when citizen complaints are made. His reassurance that "the status

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<sup>62</sup> The *Journal Sentinel* reports that, for example, one of the victims "went to Milwaukee Police Department District Stations 3, 4, and 7 in an attempt to report the kidnapping and sexual assaults but kept being referred to different stations."

of the victims had no bearing on the investigation” is also important. It reveals an awareness of the history of, and continued possibility for, discrimination against individuals because of gender, race, or class. But the terms he uses to describe the victims’ complaints – qualifiers such as “non-specific, generalized allegations” and “the allegations...without specific dates and times...are not statements of facts” – raise red flags for students of *The Cenci*. They indicate a persistent discrepancy between the criminal justice system and the victims’ of sexual trauma regarding the language and evidence required to articulate and prove sexual violence. The victims’ complaints and Flynn’s response, sadly, suggest the continued relevance of Shelley’s play. They tap into the urgency of his concerns and reveal to us the obstacles that continue to silence and repress survivors brave enough to articulate their violation. They invoke again Shelley’s question and repeat *The Cenci’s* plea for a response, asking each of us: How is justice being performed in your community?

## Conclusion

### Restorative Justice is Not a Fiction

My dissertation argues that *Caleb Williams*, *Maria*, *Frankenstein*, *Falkner*, and *The Cenci* advocate for individuals disenfranchised from the justice system and imagine alternative models of justice. Their works prioritize the victim's, the accused's, and the community's participation in often complex and convoluted truth-seeking processes. They search for outcomes that attempt to repair harm, rather than merely punishing offenders or deterring individuals from committing future crimes. My project argues that the narrative choices in these texts, and the representations of justice they depict therein, are particularly worthwhile to our understanding of justice because they were written during an era of democratic possibility and intense legal and penal reforms. Moreover, they are significant because they were written at a historical moment when criminal justice changes were adopted that would have far reaching consequences, even for contemporary practices.

My project also suggests that the models of justice they propose – built on individual stories, audience interpretation, and sometimes messy, uncertain conclusions – function in restorative ways that are literary as well as legal: the content of their representations and their narrative form progressively empower victim, offender, and community – regardless of status – to take part in justice processes. The resolutions they dramatize and the uncertainly their conclusions enact in readers, acknowledge and encourage subjective interpretations as much as they seek consistent or objective judgments. They encourage audience engagement and action. Still, the question remains,

if these fictions speak so persuasively for an alternative model of justice, then why haven't they been considered more seriously before?

It is hard to pin-point one reason why Godwin's, Wollstonecraft's, and Mary and Percy Shelley's visions of justice have not been considered more seriously. This dismissal may exist in part because then, and now, their visions were and are radical. The representations of justice they depict call for more flexibility on the part of the state, and they place greater trust and responsibility in the hands of citizens. Such bureaucratic flexibility poses a practical challenge to administer. Such citizen-based responsibility poses a potential threat to order. Their suggestion to seek outcomes that eschew traditional retributive resolutions is also risky – who is accountable if such outcomes fail? What is the price of failure?

Related to this radical opposition to traditional paradigms, and another possible reason why their visions of justice have not been taken more seriously, is the issue of gender perceptions. In her discussion of historical legal constructions of agency and reason, Christine Krueger describes how in late eighteenth- and early nineteenth-century England, perception of gender affected credibility: she writes, "Women who reasoned were vilified as masculine, while radical reason, such as that displayed by Wollstonecraft's husband, William Godwin, was denounced as feminine and irrational" (112). Just as such perceptions may have contributed to dismissing Wollstonecraft and Godwin, we see the extension of this gendered criticism extend to Mary and Percy Shelley too; *Frankenstein* has been appreciated in multifarious ways, but consideration of its contribution to criminal justice debates has not been attempted, perhaps because these have been traditionally masculine conversations. Matthew Arnold's famous, and far

reaching, Victorian characterization of Percy Shelley as an “ineffectual angel” picks up on and echoes the feminization charge of Godwin’s ideas, thereby discrediting Shelley’s contributions as irrational as well. The previously under explored idea that Wollstonecraft may have influenced Percy Shelley at all, let alone in terms of his representation of a sexual crime survivor, further implies the way that gendered perceptions may have contributed to dismissing these authors’ valuable ideas about criminal justice. Politically radical, a challenge to traditional gendered categories of reasoning, and personally scandalous – not only the posthumous reputation of Mary Wollstonecraft, but also the stigma associated with Mary and Percy’s marriage – this family’s ideas about justice were underestimated and overlooked as their century progressed and became increasingly conservative. As the criminal justice system became professionalized and modernized, and the ideals of the French revolution became muted, authors such as the Godwin-Wollstonecraft-Shelley family would, more and more, be seen as outsiders – good storytellers perhaps, but non-specialists with lofty and unrealistic ideas about justice and how it should be administered.

With the shift towards restorative practices in the twentieth and twenty-first centuries – within countries seeking peaceful, transparent government transitions following gross human rights violations or within local institutions seeking less expensive and more effective ways to reduce crime – the relevance of this family’s writing seems both significant and timely. Situated within an era of legal changes, witnesses to a government transition on the Continent that was anything but peaceful, and in some cases directly affected by their own government’s reactionary response, William Godwin, Mary Wollstonecraft, and Mary and Percy Shelley offer fictional reflections and

representations that anticipate modern restorative justice ideals; they suggest how literature may act as one powerful method for imagining both possibilities for change and ramifications of stagnancy; and they underscore the value of interdisciplinary conversation. Speaking in his characteristically optimistic way about strategies for trying to achieve human perfection, Godwin writes in *Political Justice*, “Let us look back, that we may profit by the experience of mankind; but let us not look back as if the wisdom of our ancestors was such as to leave no room for future improvement” (163). If looking back at this family’s fictional intervention into the criminal justice conversation helps us to make sense of the past, what do their texts tell us about future improvements to such interdisciplinary endeavors?

To begin, in immediate and practical ways, their fictions encourage us to recognize and listen to individuals who may be currently marginalized and to include more voices in our dialogues about justice – voices of victims and offenders as well as literary and legal voices. They encourage us to continue working towards better, more representative and participatory justice processes that come closer to revealing truth and achieving accountability. They also encourage us to continue pursuing suitable, proactive outcomes that seek long-term solutions for correcting conditions that contribute to criminal behavior and that repair harm for victim and community. Depending on our positions, these fictions suggest that the manifestations of our pursuits might look different, but they can be active, feasible pursuits nonetheless.

As practitioners within the discipline of criminal justice, their texts imply that such a pursuit might mean implementing or participating in broader, more humanist based training. Such training would foster in police officers greater competency in

listening to a victim or an offender and greater sensitivity to harm, regardless of status or crime. It might mean encouraging public defenders, prosecutors, and judges to respect the wishes of victims or victims' families who desire public acknowledgment and accountability from the offender, rather than a plea bargain or a severe sentence. It might mean choosing alternative conditions to punitive outcomes, such as deferred prosecution agreements, which consider the social factors that contribute to crimes and allow offenders the opportunity to repair harm through meeting with the victim, paying restitution, or performing some service to the community. It might mean creating conditions to give community members a forum in which to disclose frustrations and traumas – a forum that functions as a healing circle as well as a place to come up with creative, locally conceived solutions for preventing and reducing crime.

As practitioners within the discipline of literature and the humanities, this pursuit might mean reading, writing about, and teaching texts that encourage conversations about justice – from older texts such as Sophocles' *Antigone* (442 B.C.E) and *Ardish of Faversham* (1592, author unknown) to more recent texts such as Jim Coetzee's *Age of Iron* (1990), Ariel Dorfman's *Death and the Maiden* (1992), and Sapphire's *Push: A Novel* (1996); texts that represent a variety of literary, historical, and cultural perspectives on the experience and trauma of crime, that encourage us to consider how and why different models of justice are adopted, and that suggest the interrelationship between literature, justice, and civic participation.<sup>63</sup> This pursuit also might mean fostering skills

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<sup>63</sup> *Antigone* represents a woman who challenges the state's authority and raises questions about 5<sup>th</sup> century BCE Greek conceptions of individual, family, and citizen obligations in respect to natural and positive law. *The Tragedy of Master Arden of Faversham* dramatizes an historical crime committed by a woman and her lover (the murder of her husband). It raises questions about how perceptions about gender, authority, and desire manifested in Elizabethan literary and legal anxieties. *The Age of Iron* depicts the experience of a white South African woman who opposes Apartheid, but never took an active role against it. It raises questions about community members' roles in achieving or preventing justice. *Death and the Maiden* is

in our students that require them to be discerning citizens who are aware of justice processes so they are critical of assumptions about the supremacy or inflexibility of the law. It might mean asking students to learn about injustice in their own community, as well as globally or historically, and giving them opportunities to write about and be active in eradicating disparities or serving underserved populations. Such a pursuit would also mean committing to such activities ourselves and seeking out ways to model this commitment to our students. Whether we practice law, literature, politics, education, or parenting the texts by the Godwin-Wollstonecraft-Shelley family suggest that any pursuit of justice means recognizing the ways in which non-specialists and outsider parties enrich our understanding and enhance our expertise.

In terms of scholarly pursuits, recent studies such as Mark Canuel's *The Shadow of Death* (2007) and Krueger's *Reading for the Law* (2010) lend credence to my current claims as well as offer direction for a related, future, project. Canuel's study supports looking back and looking again at literary contributions to eighteenth- and nineteenth-century justice debates; he notes that Romantic era texts devoted to penal reform are "underrepresented in scholarship on the literature of the period" (6). His study also supports my claim that the Godwin-Wollstonecraft-Shelley family fictions intervene in order to offer alternatives to dominant retributive paradigms; although he limits his study to justice outcomes, he argues that "Romantic opposition to the death penalty as a species of humanitarian reform...aimed to redefine the relationship between political subjects and legal structures" (12). By showing Romantic-era texts in conversation with

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about a Latin American woman who survived rape and torture during her country's period of dictatorship. The play dramatizes her confrontation with one of her perpetrators and raises questions about retribution, offender accountability, and victim participation in justice processes. *Push* is about the experience of an African-American teenager who is an unacknowledged survivor of incest. The novel raises questions about disenfranchised individuals and sexual crime within the American justice system.

reformers such as Romilly and Bentham, his study suggests a similar relationship between literary and legal reformers. Krueger's study also helps support my current argument and suggests a future research direction. First, her study demonstrates the multidisciplinary nature of cultural constructions of the law. Second, it validates the notion that fiction, such as that which my project addresses, sought to recognize and empower legally marginalized individuals, noting that "Literary discourse, at least that which aimed at a popular audience, might also be seen as a force assisting readers to exercise rights they had won, and, in turn, to embolden unrecognized groups to agitate on their own behalf" (198). Third, her study suggests direction for further development of my project: by drawing on a wide array of legal and literary texts in order to historicize juridical developments, she breaks down the false binary between literature as a champion of the dispossessed and law as a champion of oppression. In doing so, her study suggests how a future project would benefit from considering individuals within the legal field who, like the Godwin-Wollstonecraft-Shelley family, sought similar restorative reforms during this era of democratic ideals.

Finally, in addition to the insights these texts shed on past constructions of justice, and the possibilities they suggest for pursuing it in the future, the interdisciplinary and interfamilial nature of this family's fictions have had a profound and personal affect on my current literary interests. Most obviously, they have contributed to my interests as a scholar and a teacher, but beyond this they have encouraged me as a wife and a neighbor. The characters and narratives in their fictions have stimulated conversations between me and my husband, who is a community-based criminal prosecutor, which I believe have impacted us both in the ways we think about and practice justice. For my husband, one

outcome of our conversations has been an increased appreciation for outsider interpretation of, and participation in, criminal justice practices. For me, one practical outcome of our conversations has been an increased awareness of incredible individuals in my own community who pursue restorative justice on a daily basis.

The Benedict Center of Milwaukee, Wisconsin is “an interfaith non-profit criminal justice agency...[that] works with victims, offenders, and community to achieve a system of justice that is fair...where differences are valued and values are respected, ensuring fair and equitable justice for all.” The Benedict Center seeks to reduce harm and ensure equitable justice by offering a variety of services, such as programs devoted to Women’s Harm Reduction, Justice Advocacy, Interfaith Counseling, and Community Outreach. In my limited experience there, I have met staff, volunteers, and participants committed to correcting disparities and dedicated to living out the vision of justice I argue the Godwin-Wollstonecraft-Shelley family fictions imagine.

Individuals working towards this goal at the Benedict Center have volumes to teach us about how far the family’s vision of justice has progressed and how far it still needs to go. David, who runs the women’s continuing education classes, demonstrates how to use education to restore harm. He injects compassion and humor into his instruction and treats all of his students with dignity and respect. Elizabeth, artist and volunteer, shows how literature and justice can connect by running a book club at the women’s prison and coaching other community members to do the same. She demonstrates how art can recognize, and give voice to, marginalized individuals: she paints vivid, colorful portraits of participants and then asks the women to write their own stories to accompany them. Patricia, Jennifer, and Stacey, survivors, teach us the

complicated categories of victim and offender. They show that overcoming obstacles and disadvantage requires not only an extraordinary amount of hard work and determination but also a committed network of support. They remind us how pressing, necessary, and important such a commitment is.

Beyond the sheer value of participation and awareness, if my experience with the Godwin-Wollstonecraft-Shelley family fictions has taught me one thing – restorative justice is not a fiction. It is an urgent, shared vision eager for continued improvement.

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