Separate Spheres Revisited: On the Frameworks of Interdisciplinarity and Constructions of the Market

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Abstract: *Historical analyses of modern law and literature tend to fall into one of two interpretive frameworks. One suggests that law and literature reinforce the same conceptual and ideological developments; the other reads radical separations, associating law with rule, reason, self-interest, and hegemony, and literature with plurality, emotion, empathy, and subversive counternarratives. The two interpretations have roots in cultural studies, and both inform analyses of the relation of law and literature to the rise of nineteenth-century liberalism.*

I argue that these are not two alternative interpretations, but two partial ones, and that a full account of law and literature as modern cultural discourses often requires both, but modified. An alternative framework emerges from an examination of a basic tenet of nineteenth-century liberalism, the notion of separate spheres, in two well-known cultural discourses of the nineteenth century, classical contract law and realist novels.

Law and novels grounded importantly different interpretations of the separation of spheres, and in consequence of the economic sphere, the market. The differing visions, however, do not fall along the classic oppositions between law and literature, for both emerged from joint liberal anxieties.

The polarized framework of analysis, which reads either common or oppositional stances toward classical liberalism in law and literature, in fact serves a single historical narrative: that of liberalism as an essential entity one could either oppose or support. The cultural negotiation over separate spheres, however, is better understood as a "varieties of liberalism."

Keywords: *literary realism / contract law / liberalism / separate spheres / the market / Victorian law and literature / cultural studies* / The Way We Live Now *(Trollope)* / The Mayor of Casterbridge *(Hardy)* / Ruth *(Gaskell)* / Bleak House *(Dickens)* / Middlemarch *(Eliot)* / Wuthering Heights *(Brontë)*

Law & Literature, Vol. 24, Issue 3, pp. 393–429. ISSN 1535-685X, electronic ISSN 1541-2601. DOI: 10.1525/lal.2012.24.3.393

INTRODUCTION

How did the conceptual structures of Western capitalist democracies develop? Cultural studies offer fruitful historical engagements with this question, often through interdisciplinary studies of such myriad concepts as privacy, natural order, contract, or romantic love, and their evolving meanings.

Studies of law within this framework are substantively interesting and theoretically liberating for "law and . . ." scholarship. The limits implicit in a conceptual focus on any one relationality—law and architecture, law and economics, law and literature, and so forth—are opened up and nuanced through a historically contingent relationality pertaining to specific ideas, ideologies, or concepts.

But history, too, emerges in conceptual relationships. In law and literature, historical analyses frequently fall into a polarized framework. At one pole, law and literature appear as mutually supportive hegemonic discourses. At the other, law is hegemonic whereas literature is counterhegemonic, and along the same lines, law is associated with rule, formality, reason, and self-interest, whereas literature enables pluralism, equity, emotion, and empathy.[1]

Both poles serve critical projects within legal studies; both are situated within and substantiated by cultural theory. Yet the polarized framework is often self-defeating in terms of historical understanding and in terms of the critical impulse. Neither pole is sufficient in itself, yet to keep both in view, each must be modified.

I use the lens of liberalism-critique to make a case for an alternative framework for interdisciplinary discourse analysis in law and literature. To do so, I examine the construction of a basic tenet of nineteenth-century classical liberalism—separate spheres—in two central sites of the era, classical contract law and realist novels.

The argument is simple. Nineteenth-century law and literature construed spheres differently. In particular, their idea of the economic sphere differed in important ways. But, the differences do not fall along the separating lines of hegemony/counterhegemony, reason/emotion and so forth. The differences do not fall along these lines because there was a common streak shared by nineteenth-century law and literature that was no less important than difference: both responded to joint liberal anxieties, particularly to the need to make sense of, and represent, the capitalist division of labor. Novels and law were both liberal, but differently liberal.

I am thus going to work within a tension: on the one hand, identify commonalities between law and literature that are historically significant, in line with the commitment of cultural studies to trace "unconscious mechanisms that underlie . . . central solidarities"[2]; on the other hand, insist on differences that are discourse-specific, and so, in Clifford Geertz's words, engage in "the management of difference."[3]

While both law and literature construed a liberal worldview, the meaning and content of their liberalism differed. Classical liberalism was never a single essential idea; as David Kaufmann argues, "the 'liberal tradition' is only a tradition in that its participants try to solve similar problems, not . . . because the solutions are the same."[4] Accounts of hegemony and resistance, of liberalism, and of the historical relation of law and literature to these and to each other, are thus modified.

Part I recounts the story of the historical emergence of separate spheres in modern understandings of the social structure, and the criticisms directed toward that story. Part II turns to historical accounts of the legal constitution of separate spheres, particularly the market, or economic sphere, concentrating on the common law of contract. Part III draws on a number of canonic Victorian novels to examine their significantly different version of separate spheres and its implications for construing the market. Parts II and III together offer a critique of the story of sphere separations based on divergences between discourses. Part IV then examines the joint liberal assumptions that the different versions of sphere separations nonetheless share. I conclude by tying together the historical and critical insights produced through the overall account of convergence and divergence offered here.

I. SEPARATE SPHERES AND THE MARKET

During the course of the eighteenth century, recounts Mary Poovey, emergent domains, like the economic, were gradually specified as separate from residual domains, like the political, the theological, and the ethical. These emergent domains did not immediately replace their predecessors, however, but were mapped onto them in a process that entailed the negotiation and eventual redrawing of the boundaries between kinds of knowledge, kinds of practice, and kinds of institutions.[5]

As Poovey's account suggests, separate spheres denote a compartmentalized view of the world, a separation of "forms of human association"[6] and more generally human experience into identifiable areas answering to distinct logics and exemplifying typical patterns of relations. Most familiarly, a separate-spheres view entails a distinction between state, or politics, and civil society—that is, "public" and "private" life. Within the private sphere, a second separation is between the economy, or market, and family life (often, and confusingly, discussed through public [market] and private [home]).

Historians of late Western modernity, particularly feminists and market critics, have long attended to separate spheres both as ideology, as a basic tenet of liberal thought, and as a sociological reality, as a structural element of the capitalist social order. Max Weber famously propounded an understanding of the rise of capitalism as an evolutionary story of separation between family and economic activity.[7] The story, with a controversial starting point periodized to various eras from the thirteenth to the nineteenth centuries,[8] describes the shedding of obligations that stood in the way of rationalization. Zygmunt Bauman recounts the basic plotline: the rise of modern society was a "melting of solids." The dense tissue of social obligations was undone, leaving "the whole complex network of social relations unstuck." In this process, the economy was progressively untied from its traditional political, ethical, and cultural entanglements.[9]

Feminist histories often offer similar accounts while emphasizing the emerging role of the family sphere to which women were largely confined, construed in opposition to the economic. The story recounts a sharp dichotomy reaching its zenith in the nineteenth century between the feminine home and the male workaday world. The separated spheres were defined one against the other, with the home assuming significance for its difference from, and compensation for, the market, and vice versa.[10]

The separation of spheres within civil society, variously formulated as market versus home, economy versus family, exchange versus gift, and so forth, imports with it a basic contrast in both norms of conduct and structure: rational, calculative, self-interested action, based on abstract freedom and formal equality in the former, are contrasted with altruistic, fluid, compassionate action in an often more dependent and hierarchical context, in the latter.

The story of the separation of spheres has been criticized for its descriptive limitations. Addressing the economic sphere, Marcel Mauss criticized the modern Western conception of economic exchange based on material utility

with evidence from "archaic" societies. In those societies, he argued, the modern conception is nowhere to be found, and the concepts that "it pleases us to contrast," like liberty and obligation, generosity and self-interest, are in one melting pot. Modern society, too, is not as rational as it imagines, Mauss suggested; we too would do well to put our concepts back into the melting pot.[11] Poovey likewise addresses the complexities of the disaggregation of spheres. The negotiation of sphere boundaries, she argues, was full of fissures that resulted not only from the uneven relationship between discourse and institutional practice, but also from the historical indebtedness of spheres to older ones from which they emerged.[12]

The following two Parts consider conceptualizations of sphere separations in contract law and novels of the nineteenth century. Read together, the account traces divergences between discursive constructions of spheres. It thus offers a critique of the historical story of separations, not simply as a sociological reality, but also as ideology. Classical liberalism did not entail a single version of the separation and meaning of spheres, or a single version of the market. Classical liberalism, as a set of ideas accommodative of a capitalistic market-based order, could be read in more than one way, ascribe meaning in more than one way, understand, naturalize, and structure the multiple phenomena of market society in more than one way.

Today's literature on liberalism should allow readers to quickly appreciate the argument. Recent decades have seen mounting literature departing from familiar accounts of sphere separations. Accounts in various disciplines have underlined relational autonomy, the centrality of interdependence in conceptualizations of modern economic life, and the complexities of any account of consent emerging from the embeddedness of practice and utterance in social contexts. Thus, the complexities in liberalism explored in this paper today should fall on fertile grounds. Concurrently, today's literature on "varieties of capitalism" addresses multiplicity at the level of material reality, which leaves no room for monolithic ideological accounts; varieties of capitalism, note, are also acknowledged historically.[13]

Yet, all of this seems to have little operative relevance in discussions of Victorian liberalism. The richness of literature on liberalism today is conceptualized as a late historical critique of an earlier and almost undisputed hegemonic construct. Present and historical capitalisms do not seem to complicate the historical picture either, perhaps because within units considered single economies and cultures, like states, any diversity is reduced to a for-and-against

formulation. This paper suggests, however, that for-and-against accounts of liberal ideology are no more convincing historically than they are in the present. Liberal ideology should be disessentialized in historical terms, and law's and literature's positions reconsidered.[14]

II. CONTRACT LAW[15] AND THE MARKET

Classical contract discourse of the nineteenth century—the bedrock of modern contract and the heart of private common law—construed sphere separations on two levels. First, classical discourse relied on a distinction between politics and civil society as two separate spheres of action. The distinction was based upon a clear division between public and private sources of lawmaking. On a second level, contract discourse construed separations within civil society, between market and nonmarket (yet "private") forms of association: classical contract discourse assumed and reinforced an existence separated into two opposing yet mutually dependent halves—a contractual sphere of trade grounded in socially disembedded economic self-interest, and an area of family and friendship beyond the reach of contract. Contract law was the law of the market.

How did contract law generate the separation of spheres? The following discussion explains the broad conceptual structures of classical contract discourse that grounded sphere separations, and then discusses one specific, problematic, and especially revealing aspect of contract thinking: the promise of marriage.

A. The Conceptual Structures of Classical Contract Discourse

Conceptually, the theory of contract was centered on a view of contract as an expression of individual will, as opposed to the will of the community.

"As every contract derives its effect from the intention of the parties, that intention, as expressed, or inferred, must be the ground of every decision respecting its operation and extent, and the grand object of consideration in every question with regard to its construction."[16] Such was Pothier's classical formulation of the will theory of contract, the basis of the common law formulation.[17] The core of contract law was organized by legal thinkers, explains Duncan Kennedy, to reflect a set of ideals associated with the distinction

between private and public will, between individual and community: facilitation as opposed to regulation, self-determination as opposed to paternalism, autonomy as opposed to community, and formality as opposed to informality. All of these served to construe the market logic and its counterimages.

In the organization of contract rules, classical thinkers had to deal with many contract rules that reflected regulation, paternalism, community, and informality. Two doctrinal developments solved the difficulty: the rejection of the ideas of "status," "relation," and "condition" as operative sources of the great mass of contract rules, as they had been in earlier eras, and the emergence of a specialized law of persons and of a new category of status, which grouped together and explained the peculiar character of rules incompatible with the new vision of the nature of "real" contracts.[18]

The distinction between private and public sources of obligations, between contract and status, was importantly grounded in the centerpiece of contract law, the doctrine of consideration. The basic question raised by the doctrine was deceptively simple: what promises will the law of contract enforce? Whatever the answers were, argues Roy Kreitner, the very question had already succeeded in achieving a crucial conceptual goal: promise—understood as an individually created, self-imposed obligation—became the sole source of contractual duties.[19] The realm of exchange was the realm of individual action, from which the community was excluded.

Another important feature of classical contract law was its attention to the formation of contract over its content. The role of contract law in its classical version was to ensure it enforced free transactions, not police their content. Rules of formation thus developed in the nineteenth century, becoming more and more intricate, and judicial review of contractual content tended to be explained through them. This attention, argues Kreitner, obscured the role of societally imposed obligations in contractual contexts in favor of individually chosen obligations.[20]

Additional features of contract thinking added a second crucial layer to the market image of contract law, rendering contractual individual action not only private, but rational. One such feature is the distinction between contract and gift, with gift (or, in the classical period, any unbargained-for promise), like status, left outside the contractual boundary. Whereas the nonenforcement of gratuitous promises had a long history in case law, classical thinkers turned it into "the cornerstone of the contractual edifice." The boundary line traced the lines of rationality: unreciprocated transfers raise the spectre of

economically irrational social transactions, which the legal vision of the market denied.[21]

Another formulation of the manner in which contract discourse generated separate spheres is the opposition between what Roberto Unger calls principles and counterprinciples. Classical contract doctrine expressed as one of its dominant principles the freedom to contract, or to choose one's contractual partners. Doctrinal developments that undermined freedom to contract in order to protect communal aspects of social life were counterprinciples. Their effect was to limit the application of freedom to contract in areas in which more complex textures of reciprocity and dependence required protection.[22] The principles and the counterprinciples, then, relate to background assumptions about different kinds of human association, the former acknowledging nothing but self-interest, the latter taking into account reciprocal loyalty, support, and dependence. Counterprinciples were understood precisely in their oppositional stance to principles, and were formulated as mere ad hoc qualifications to them; they were not allowed to undermine the basic conceptual structure expressed in the dominant principles, but rather worked from the outside, as it were, to limit their application. Maintaining the dominance of principles as the essence of contract and treating areas subjected to counterprinciples as anomalies or somehow less contractual, grounded the idea of different models of association for different spheres of life; they reinforced the distinction between the market sphere and the sphere of family and friendship.

The analytical distinction in legal discourse between societally and individually imposed obligations, between dependence and self-interest, between status and contract, gained impetus from its convergence with a wider political implication: contract's meaning as "not status" was part of Victorians' understanding of their historical moment, of the search for an alternative system to traditional hierarchies that would move individuals from subjection to freedom.[23] Maine's famed proposition on historical progress from status to contract created something like a frame, placing contract squarely within the structure of nineteenth-century society. Over and above any analytical meaning in his formulation, Maine used contract as a proxy for the refined (and progressive) essence of nineteenth-century social reality of industrialization and the market.[24] As Dicey explained, the substitution of relations founded on contract for relations founded on status was for individualists generally the readiest mode of abolishing a whole body of antiquated institutions.[25] Though "abolition" of status was a far exaggeration of the historical politics at work here,[26]

status was indeed problematized with the rise of liberalism, and contract was implicated in the process. Contract, as the par excellence tool of the market, represented a set of freely chosen, self-imposed obligations of formally equal individuals—unlike status, which represented obligations imposed without an individual's consent, tied instead to a dependent social position

The conceptual process in contract thought is described by Kennedy as a double movement, subtracting relations from the picture, then abstracting to find individual will as the essence of what remained.[27]

The specific formulation of free will that remained at the core of contract after subtraction and abstraction suffered from apparent logical inconsistencies explicable by the model's version of the market as a realm of competitive economic rationality. Consider "free": the will theory received its impetus from the ideal of freedom; the scope of contract was the scope of freedom for individual self-determination. The classical notion that contract law embodies freedom was intertwined, however, with the ideal type of the market economy, for it is the state of perfect competition that protects parties from arbitrary power over one another.[28] In any condition of less than perfect competition, individuals are not perfectly free, not even within the limited concept of negative freedom. The enforcement of contract was another aspect of diminished rather than enhanced freedom, a point suppressed under the need to secure market transactions.[29]

Now consider "will." Despite the focus on individual will, the model did not attempt to pinpoint the subjective will of the parties. Instead, classical contract law adopted objectivism, imputing liability on the basis of objectively determined manifestations of intention. Although, at first glance, objectivism appears puzzling, departing from the proclaimed commitment to the parties' wills and offering instead a measure of protecting reliance, objectivism was consistent with the conceptual investment in a vision of the market sphere: it was part of contract's formality, and contributed to the tendencies of abstractionism, or reluctance to concretize and bring into view the social contexts of rational market actors and the absoluteness of contractual rights, supporting contract's compatibility with market prudence.[30]

B. The Promise of Marriage and Separate Spheres

The promise of marriage is a borderline area, a difficult and hardly paradigmatic aspect of contractual thinking. Dealing with difficult cases, which

threaten the outlook grounded in legal discourse, is helpful for two reasons. First, the core claim, contract law's commitment to separate spheres, becomes clearer through the estranging effect of a liminal case. Second, such cases serve as a reminder that legal discourse was not free from complexities and contradictions; I trace *dominant* visions in law and, in the next Part, in novels, without claiming exclusivity or full coherence for either. I will therefore repeat the same exercise—an analysis of an internal contradiction, with respect to novels as well.

* * *

By the time civil marriage was made universal in the mid-nineteenth century—apparently a step toward contractualism—the view of marriage as contract depended on the nominally consensual aspect involved in choosing a spouse or agreeing to marry. Other than this aspect, from early nineteenth century the incidents of marriage were largely prescribed by the state.[31] Coverture meant the legal death of married women as contracting parties, itself a doctrine in stark opposition to the idea of the marriage relation as contract.[32] Accordingly, classical writers excluded marriage from their treatises on the law of contract, defining it as status.[33] As a matter of public debate, the contractual view of marriage was up against a concurrence between the Christian emphasis on marriage's sacramental quality, which united man and woman into one person, and separate-spheres ideology, which combined a denial of gender equality and a concern about the ruthless world of the market from which one had to find shield and at the same time protect the family.[34] Marriage's exclusion from contract law was thus part of contract's alliance with a separate-spheres outlook.

The promise of marriage, by contrast, was encompassed under general contract law. Historians disagree on the importance of the contractual framework for the action for breach of promise. Some, like Patrick Atiyah, view it as significant, a telling sign of the triumph of the classical model of contract.[35] Susie Steinbach argues that the promise of marriage, its rise and fall, can make little sense outside the ideology of contract.[36] Others, like Ginger Frost and Saskia Lettmaier, view status-based questions of class and gender as paramount here and tend to dismiss the contractual framing as thin cover, if not total misfit, of little help in explicating the fortunes of the promise of marriage.[37]

The promise of marriage was indeed a conceptually difficult area for contract discourse, and not only because it complicated abstractions usually applied

to market contexts. The inherent contradiction between the will—which was here linked with the ideal of unencumbered love—and the coercion involved in holding promisors to their promises was particularly difficult to square at the rhetorical level. In terms of contract discourse, the promise of marriage is thus an easy target for critique.[38]

And yet the promise of marriage is not simply a site that undermines the discourse's framework. Despite its problematics, there is a conspicuous point that illuminates law's commitment to separate spheres. The point is precisely the dividing line between contract and noncontract: the distinction between betrothal and marriage. Contractual rights generated by the promise of marriage applied to the period of betrothal; the action for breach of promise reinforced the fact exemplified in the legal structure of marriage itself: contract stopped at the threshold of the family.

Why stop after betrothal and not before? Why enter this conceptually difficult zone? This point too can be answered within the same framework. The search for a husband was for Victorian women their most important, and often exclusive, economic career, and the period of betrothal represented the highest point of risky investment.[39] Economic hazards to women from broken engagements lay at the basis of the action for breach of promise; these economic meanings were closely, and perhaps not merely coincidentally, linked with the classical view of contract. In enforcing promises of marriage within the framework of general contract, law recognized women as economic agents, if for a limited scope and purpose, perhaps even the counterintuitive purpose of moving women into coverture and reinforcing their dependent nature.

We see here a complex phenomenon: contract thought observed a fragile line between the imperialistic tendency of the will theory to bring under its wings a wide variety of abstracted relationships, and separate-spheres outlook, which required that only relationships answering to market rationality would enter the contractual zone. The prolonged controversy over the action for breach of promise clarifies how nontrivial the line indeed was, with opponents voicing the intuition that the contractual framework was inappropriate for the familial context of marriage promises.[40]

In the distinction between the promise of marriage and marriage itself, the two levels of separation of spheres converged: the separation between the family (marriage) and the market (promise of marriage) became a reflection

of the separation between the state (marriage as status) and civil society (promise of marriage as contract).

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Contract discourse substantiated a rigorous version of the separation of spheres. The first level of separation, that between public and private spheres, created the market as a free realm. The second level of the separation of spheres, that between market and nonmarket private relationships, injected specific content into market interaction. Having marginalized relations that were not individually chosen and shaped, contract law decentered relations not adhering to a strict rationality and rigid allocation of rights and duties, constituting the market as a competition among rational economic agents who owe one another nothing beyond their chosen contracts.[41]

III. NOVELS AND THE MARKET

"The society and the novels—our general names for those myriad and related primary activities—came from a pressing and varied experience which was not yet history, which had no new forms, no significant moments, until these were made and given by direct human actions."[42]

Like contract law, nineteenth-century novels were negotiating a complex relationship between is and ought, between real and invented, between constraints and possibilities in an era of change, which required new forms, new conceptualizations, direct human action that would create them, and, by the same token, make a world that was not yet history.

Unsurprisingly, therefore, novelistic representations of market society have attracted critical attention as often as legal representations. Criticisms seem to align with expectations of common hegemonic assumptions in law and literature, for they often relate novels to the shift to classical liberalism. The best known reference is probably Ian Watt, who explained the rise of the realist novel against the economic, political, and ideological rise of individualism, in which, Watt noted, the idea of contract was central.[43] Analyses have confirmed and reconfirmed the relation from various directions in a series of claims about the Victorian novel as supporter of bourgeois ideology, as the par excellence middle class art, or, beyond class relations, as naturalizer

of a capitalistic social order and promoter of individualistic values, at times discussing novels and law together.[44]

Specific arguments on novels' relation to separate-spheres thinking likewise abound. Catherine Gallagher, for example, argues that the association of public and private in realist novels depends on an underlying assumption that the two are separate.[45] Franco Moretti, to take another example, reads links between professional and family life established in George Eliot's *Middlemarch* (discussed below) as confirming the Weberian paradigm that opposes "vocation" as a depersonalized sphere to "everyday life," maintaining that one must be sacrificed to the other.[46]

And there are, of course, readings pointing the other way, those questioning novels' commitment to the separation of spheres.[47]

How do these readings hold up when examined against contract law's version of separate spheres? To what extent does the construction of market, of economic rationality and trade in novels share the same consciousness of human experience found in legal discourse? The question seems worth asking not least because novels, like law, were virtually obsessed with the new world of commerce, identifying contract as a human endeavor central to their emergent society. Contract was for novels, no less than law, a conceptual tool for delineating social relations as historical frameworks responsible for that task—feudalism, religion—wore down. Stories of promises, debts, and exchanges of all sorts pervade novelistic pages, functioning as both frames and content for representations of economic relations.

A. The Single Arena

> Melmotte listened . . . in the course of the debate . . . a question arose about the value of money, of exchange, and of the conversion of shillings into francs and dollars. About this Melmotte really did know something. . . . It seemed to him that a gentleman whom he knew very well in the City—and who had maliciously stayed away from his dinner—one Mr Brown . . . understood nothing at all of what he was saying. . . . [A] statement had been made . . . containing, as Melmotte thought, a fundamental error in finance; and he longed to set the matter right. At any rate, he desired to show the House that Mr Brown did not know what he was talking about—because Mr Brown had not come to his dinner. (529–30)[48]

Augustus Melmotte, Trollope's deservedly famed corrupt financier, thus decides to make a speech at his first appearance in the House of Commons, the highest point of his career. The attempt ends embarrassingly. Melmotte's courage slips away under the intimidating presence of statesmen and House members; he is further cowed when corrected with regard to formal forms of address in the House, and loses the gist of his argument.

The episode captures the inability of an economic concept to enter social interaction in a pure form. What begins as a supposed "error in finance," attributable to no one but "commercial gentlemen" subject to their specialized "crazes" (530), ends in the complex space figured in the representative system of parliament. Here, the pure concept becomes something worth talking about because it interacts with those subject to other crazes, with social injuries, with social hierarchy, and with social rules of conduct. While the content of the pure financial argument is lost, its meaning is established. We have here an almost visual image of a concept moving from the land of ideas to the land of social people, and changing its basic quality as it does.

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This Part exemplifies how a number of canonic Victorian novels represent commercial activity and economic contexts, establishing their importance precisely in the social forms they assume. "Single arena" is the term I use to explain these representations.

"Single arena" denotes a novelistic interpretive structure, a way to attribute significance. Novels pull diverse strands of experience and activity—friendship and enmity, romance, family, commerce, religious practice, art, science, politics, and what not—and give them all meaning as interdependent social transactions of insistently relational persons within a single social world construed by and in the novel. In pulling multiple strands together and understanding them as interdependent social transactions, the novels discussed here undermine the notion of separate spheres answering to distinct logics. They replace the consciousness of discontinuity—of boundaries between the spheres that make up the social world—with a consciousness of continuity—of porous and incoherent boundaries between loosely differentiated spheres of activity—which all succumb to a governing social logic.

The single arena implies that relationships in different spheres, like those in the family or the market, do not ultimately rely on different logics. In particular, the market rarely runs on economic motive alone. The overarching

logic of spheres of human action, whatever their function, is the broad category of the social, in which persons act out their insistently social attributes. This point is represented not only in direct accounts of human motivations, but also formally. One aspect of the formal representation of the single arena is structural parallelisms between different spheres that work to underline a common social logic. Another formal representation is a juxtaposition of either similar economic positions, only to treat them differently, or a juxtaposition of different economic positions, only to treat them similarly—in both cases through some form of a social logic that governs in lieu of the economic.

The single arena also implies that spheres are not closed systems but interdependent ones. Interdependence relies not simply on spheres' conceptual place as parts of a whole (a notion informing separate-spheres thinking in law), but on continual, mundane connections: on representations of minute and multiple causal chains cutting across sphere boundaries, which I refer to as "floating causality."[49]

As a result of the overarching social logic underlying various spheres, and of the interdependence between spheres, the dividing lines between them are inherently blurry.

B. An Embedded Economy

The single arena is not a view we might label, perhaps sentimentally, premodern. Differentiations between spheres of human activity, both rhetorical and functional, are evident everywhere, hence single *arena*, not single sphere. Indeed, the social embeddedness of the economy in novels begins with the fact of differentiation.

> [T]he curious double strands in Farfrae's thread of life—the commercial and the romantic—were very distinct at times. Like the colours in a variegated cord those contrasts could be seen intertwisted, yet not mingling. (183)[50]

Donald Farfrae, the modern man of an ascending commercial world in Thomas Hardy's *The Mayor of Casterbridge*, is an apt character for clarifying the meaning of the single arena in economic relations. Farfrae's severance from his beloved homeland while successfully pursuing his business sharpens the sense of differentiation between spheres in the new world of commerce.

Farfrae's world is not undifferentiated; rather, its power lies in the representation of intertwined (or, as the novel would have it, "intertwisted")—yet not merged (or "mingling")—spheres. Although they do not become one, the different spheres of *The Mayor of Casterbridge*'s world always exert influence on one another, expose multiple interconnections, their rationalities never ultimately distinct, though their formal functions are.

"Intertwisted" spheres can work well, as with Farfrae, or can take the reverse course, as with the tragic antihero of the novel, Michael Henchard. The mirror imaging of these two characters—the one ascending and the other descending—across commerce, romance, family, and public office (mayorship), relies on *The Mayor of Casterbridge*'s commitment to the single arena, to the "intertwisting" of spheres.

Henchard's bankruptcy, part of the plot of Henchard's downfall, is one instance representing the distortions of a separate-spheres point of view. In the novel's bankruptcy scene, creditors assess the situation. The bankruptcy, they all concede, was brought about by a rashness of dealing without bad intent; Henchard, they think, had been fair. Yet, bad intent was there. There was bad intent directed toward Farfrae, whom Henchard jealously sought to ruin until he himself was ruined. Henchard was also willing to cheat creditors: rather than repay them by accepting a loan from his rich ex-lover Lucetta, Henchard asks her to pretend to be his fiancée and ease creditor pressure. Henchard will not take a business loan from a woman in a symbolic denial of the mixture between market and home, or male and female spheres. This denial speaks foremost to its inversion: whether a woman enters the market formally as lender or remains put as wife-to-be, she is involved in the business. Henchard, as is customary with him, chooses the wrong path and is unable to avoid bankruptcy. To understand the bankruptcy, however, his proceedings must be read contextually. The distorted impression of creditors problematizes the idea of removing business promissory relations away from their social and personal entanglements. The strands are not separable. Separation is distorting, note, not because it creates a partial picture, but because it creates a wholly different picture of the economy. *The Mayor of Casterbridge* offers the market sphere as a specific form of responding to social concerns, not their subordination to economic motives, all the less their denial.[51]

Chains of floating causality are equally at work in *The Way We Live Now*, with which I began. In the rise and fall of Melmotte, the central plotline in the novel, every business transaction, and every social, religious, and familial

connection is linked with the search for social recognition. The search for social recognition arises in risky debt, which drives the transfer of funds within the Melmotte family from father to daughter. This becomes substantial-personal rather than technical-businesslike when the daughter, Marie, takes a stand of her own driven by Melmotte's opposition to her chosen marriage. This, in turn, complicates Melmotte's ability to evade the Sussex contract trouble in which he attempts to purchase land, which secures share collapses, betrothal collapses, and the multidirectional domino effect continues. The text lets floating causality float very freely, problematizing separate-spheres thinking.

The social blurring of lines between economic and noneconomic relations is the background assumption allowing Elizabeth Gaskell's 1853 story of a fallen woman, *Ruth*, to substantiate its call for compassion across spheres.

Orphaned Ruth's guardian is the flourishing maltster of Skelton, a "sensible, hard-headed man of the world; having a very fair proportion of conscience as consciences go; indeed, perhaps more than many people; for he has some ideas of duty extending to the circle beyond his own family"(8).[52] When Ruth's father dies, the guardian is surprised at being appointed executor to a will and guardian to a girl he could not remember, but he "did not, as some would have done, decline acting altogether, but speedily summoned the creditors, examined into the accounts . . . and discharged all the debts," and under the same sense of duty, he

> paid about £80 into the Skelton bank for a week, while he inquired for a situation or apprenticeship of some kind for poor heart-broken Ruth; heard of Mrs Mason's [a dressmaker], arranged all with her in two short conversations; drove over for Ruth in his gig; waited while she and the old servant packed up her clothes, and grew very impatient while she ran, with her eyes streaming with tears, round the garden, tearing off in a passion of love whole boughs of favourite China and damask roses . . . (38).

Thus Ruth is placed in her new solitary life, from which the story of fall and then martyrdom-like rise flows.

The text points to a troubling parallelism between Ruth and her father's debts, both handled by the guardian using an efficient and emotionally impoverished standard. The episode is set up to clarify the origins and problematics of this standard.

The guardian's name is never mentioned, in line with his personal remoteness from the task. His sensibility implies impatience when one of his objects (accidentally, Ruth) exhibits emotional responses inconsistent with his idea of the job. His impatience is followed by his lectures on "economy and self-reliance" (38), from which Ruth is little able to "profit," being grief-stricken.

The story is amplified through formal presentation. The narrator describes the guardian's actions in one long sentence lumping together actions relating to assets, debts, and a young person, and showing them all to be part of one to-do list, satisfactorily performed. The part of the list dealing with Ruth begins with one clause between two semicolons: "; paid about £80 . . . while he inquired for a situation . . . for poor heart-broken Ruth;". In this single unit we see the same parallelism suggested by the whole structure: £80 in the bank are juxtaposed with Ruth in her despair. This is the only mention of an amount, boldly attaching monetary value to Ruth, which defines her future options and the rest of the novel.

The guardian episode consists of only two paragraphs, the first beginning with the creditors, and the second already continuing into the first night at the dressmaker's house. The mismatch between form and content (a brief episode and a huge crisis) textually performs Ruth's social neglect. This structure also creates a formal and technical connection between the debts (opening paragraph) and Ruth's personal fortunes (closing paragraph), duplicating the guardian's treatment.

The critique of commodification informing this episode is familiar enough. It enables *Ruth* to seek "justice, tempered with mercy and considerations" (240) across spheres, commerce included. The underlying world view driving the critique, however, is perhaps less than obvious: *Ruth* does not depict moments of "market" intrusion upon nonmarket safe havens. It construes an inextricably mixed world, in which supposedly anonymous "market" transactions, like the late father's debts, are always entangled in affective relations and symbolic meanings; a world experienced through the points of overlap and floating causality between different activities; that is, through the single-arena consciousness.

Single-arena representations in Dickens's 1853 *Bleak House* rely on a moral economy of interdependence. *Bleak House* represents its world as an intricate web of interdependencies gradually expanding to encompass an entire society. A controlling image emerging from this conception is an opposition between far- and near-reaching. *Bleak House* allocates blame and praise

according to personal and institutional abilities to respond to immediate realities.[53]

Within this moral framework, the novel represents formally parallel economic agents who nonetheless attract different moral evaluations, and formally different economic agents who occupy morally parallel positions, submerging economic contractual logic under social concerns governing the evaluation of human activity in the text.

Take two similarly failing debtors: Harold Skimpole and Mr. George. Both characters are of little economic means, and both accrue unpayable debts that lead in the novel to expanding misery. Yet Skimpole is derided, while George is applauded. Why? Because every economic transaction in *Bleak House* depends for its evaluation on the location of actors within the moral economy of interdependence. To underline this outlook, *Bleak House* contains careful narrations of similar economic situations, encouraging an active search of the terms of difference.

The infamous Skimpole presents a process of increasing distance from material reality as a successful culmination. In a series of rigorous logical absurdities he suggests that in being required to repay debts, he is asked for something that is really nothing (money as "bits of metal or thin paper"); he intends to give it, but he does not have it; and so he should be rationally lawsuit-proof (240–41).[54] A set of denials of the relation between representation and reality—money representing real value, intention referring to real objects, rationality representing real people who want real things—points back to Skimpole's ego as a sole reality, leaving his multiple creditors empty-handed.

Mr. George is praiseworthy for, despite similar failures to pay, he reverses Skimpole's abstractions. George's externality, contrasted to Skimpole's, signifies his hands-on approach: George is in touch with life, his sunburnt face and arms having "been used to a pretty rough life" (341), whereas the abstracted Skimpole is delicate and generally looks younger than his age (89); Skimpole's movement is light and bright, whereas George's "step too is measured and heavy" (341). George is almost physically attached to the ground he walks, his immediate environment leaves physical marks on his body, a figurative image of near-reaching. Being an involved character, George not only intends to pay, he ties (unsuccessful) repayment to his personal efforts. The money he owes is likewise recognized as contextualized value: something that could make him "steady" in life; something that makes

him fragile vis-à-vis his creditor Smallweed; something on which his guarantors' well-being depends.

Compare George's and Skimpole's representations as two poor debtors to the treatment of two different positions within contract: a poor debtor and a rich creditor. Here, despite obvious differences, we find a similar moral evaluation. George's lender, Smallweed, turns out to be analogous to Skimpole. Whereas Skimpole rhetorically denies the value of the money he borrows, representing himself as having "no idea of money" (90), Smallweed denies the value of anything but the money he is owed. He never goes out nor occupies himself in any way, denying the value of literature, music, or any other interest, in an apparent contradiction to the hedonistic artist, Skimpole. Yet Smallweed's consuming interest in the "God" of "Compound Interest" (333) is a disturbing estrangement from concrete realities, essentially akin to Skimpole's dismissal of "bits of metal and thin paper." Neither antimaterialism nor materialism worked pure is satisfying for *Bleak House*. Both fail, from the two sides of economic transactions, to acknowledge credit's relation to the complexities of life, without which it becomes a form of danger.

Bleak House's interest in a contextualized assessment of relational actors allows for distinctions between similarly failing debtors like Skimpole and George, and similarities between apparently contrasted positions like Skimpole the debtor and Smallweed the creditor. The form encourages a social reading of economic relations, allowing a moral framework to govern and embed monetary transactions.

To conclude this brief tour in novels, consider George Eliot's celebrated *Middlemarch*.[55] Individual protagonists in this novel repeatedly encounter a nonaccommodating reality, both of other individuals and of communities, to which they unhappily adjust—a focus that has won *Middlemarch* its association with classical liberalism. Three central stories, those of Fred Vincy, Tertius Lydgate, and Dorothea Brook, rely on promissory tales to bring into focus the self/other, individual/social encounter and follow its track. With Fred and Lydgate, the promise is a loan contract, whereas with Dorothea it is her husband's death-bed wish for an open-ended declaration of loyalty. These promises are differentiated along a number of lines: market vs. family, man vs. woman, made vs. never made, reciprocated vs. unreciprocated, legally enforceable vs. unenforceable. However, joint significance is infused into these stories through the common function of the promises within the self/other, ideal/real tensions explored in the novel. Representations of

promissory relations allow, once more, a replacement of discontinuities and oppositions between spheres, with continuities reliant on a governing social logic. The promises' joint significance renders the conceptual distinctions between them secondary in importance, not to say disinformative.

What to make, then, of claims to the contrary, like Moretti's argument about *Middlemarch*?[56] Both interpretive arguments—"single arena" and "separate spheres"—proceed from the observation that novels deal with a multiplicity of spheres that appear intertwined, open to multidirectional influence, and subject to common thematic concerns. In privileging the single-arena reading, I insist that these representations of complexity, intertwining and interconnections, both in form and content, are part of the *meaning* of spheres in novels, rather than noise one can relegate to a peripheral position. It is precisely here that literary discourse actively and forcefully constructs a picture of human existence importantly different from the legal one, itself achieved with no little effort.

* * *

The single arena in the representation of economic relations achieves, in Jeffrey Franklin's terms, a subsumption of all spheres.[57] Novelistic representations of commerce, business, or the "economic" do not produce an ideologically oppositional space to the legal one. Instead, they acknowledge the relevance of materialism, economic gain, and market exchange, but insist on tying these with sets of motives and causal chains that return to the social.

C. Single Arena or Separate Spheres?

In my discussion of contract law, the promise of marriage served as a gray area bringing law's conceptual structures into focus. In this Section, I turn to a gray moment in literature, again under the conviction that by observing liminal cases we learn a lot about a category of thinking, perhaps much more than we can learn by observing its paradigmatic core, its easy cases.

The following discussion clarifies in what sense *The Way We Live Now* grounds discontinuous, strictly separate spheres, despite its forceful representations of a single-arena world.

In *The Way We Live Now*, the terms of trade are portrayed through a story of a public railway company, used by Melmotte and the American Fisker to raise public funding.

The railway plot is informed by the single-arena outlook. The text obscures the economic aspects of the story to which the reader is first introduced—no paid-up capital, a potentially unnecessary railway that may never be built, and questionable share allocations; these aspects become an unresolved question. The logic of railway share trade, having been obscured, is then dislocatingly elaborated through a story of trade in dinner tickets for Melmotte's party; the ticket exchange functions as a mock market trading in social desires and turning on the social faith in Melmotte.

In dislocating railway share trade to the trade in dinner tickets, *The Way We Live Now* narrates only what can be easily narrated in terms of English sociality, turning the spotlight onto the behavior of the investing public interested in English social capital available at the dinner event: mixing with social superiors, laying eyes on symbols of English society, appropriating English inherited land (the heart of Melmotte's rise and fall). This formal dislocation underlines the social meaning of trade.

And yet there is a sense in which separate-spheres thinking pervades the text. The narrative emphasis in the railway plot is on Melmotte, and his problem is that he does not really represent an economic logic nor the beneficent impartiality that the public expects to see once economic need is satisfied (337). Melmotte is overcome by his passion for social glory, and his public projects are likewise figuratively succumbed to his transactions in land, a quintessentially English social capital. The investing public, like the corporation's directors, obeys rules of social interaction while turning its gaze away from the business. Put simply, *The Way We Live Now* narrates a failure to create a rational economic sphere in England.

Yet economic rationality is not entirely unrealized: *The Way We Live Now* has relegated it to the other side of the ocean, alas, with no better results. The rationality of the Americans in the novel goes hand in hand with dishonesty; their pursuit of economic goals, without social constraints and prejudices, with openness and daring, is immediately linked with lies. Given this coupling of economic rationality with falsity, what *The Way We Live Now* seems to offer is not a choice between rationality and sociality, but something else. The textual effect is to enhance awareness of the manner in which real-world commerce can diverge from the ideal concept. Recall the opening quotation in which a financial concept changes its shape in parliament.

The absence of a pure economic logic here becomes an issue, a thing considered more consciously *as* absence. This awareness turns absence into

presence. Whether the absence is to be regretted or not is less important than making it a fact to be noticed. In ideological terms, this is a moment that should be captured when we seek to understand how a separate-spheres consciousness becomes so convincing, how a text representing nothing but the single arena contains a grain that could become a source of meaning, as it was in Victorian legal discourse, and as it has remained for historians of the era.

IV. CONTRACT LAW, NOVELS, AND JOINT LIBERAL ANXIETIES

In gray areas the differences between separate spheres in law and single arena in novels are blurred. From these gray moments one can turn to central commonalities between the outlooks of nineteenth-century contract law and novels.

Both the legal tendency toward a separate-spheres consciousness and the novelistic tendency towards a single-arena consciousness have this in common: an anxious need to make sense of the social division of labor, of a functionally differentiated capitalist world.[58] Both separate spheres grounded in contract law and the single arena grounded in novels assume and take for granted that society is made up of multiple and varied functional domains, important among them the economic; that humans go through life, and in fact through every day, by moving among those domains; and that to make sense of human experience the meaning and relations of domains to one another must be reckoned with. Functional differentiation, in other words, is both assumed as a fact and attributed normative importance under the two outlooks: separate spheres and single arena.

One need only return to familiar stories of the rise of modern society, to Weber[59] or Durkheim,[60] to see that the imagination of society through functional differentiation is a major conceptual lens through which to capture a capitalist world.[61] Indeed, the acceptance and need to make sense of functional differentiation, to explain and shape the relations between domains of human existence, is an elementary part of liberalism of whatever variety. We might view this as the minimal commitment on the basis of which we can begin to articulate varieties of the kind explored in this paper.

Why is attention to functional differentiation so important for liberal thought? For at least two reasons. First, liberalism, in every variety, is a

worldview in which human existence is normatively ordered by imagining not only individuals, but the relations between individuals and society, coupled with an assumption that individuals' relation to society are multifaceted and variable rather than holistic and predetermined. This assumption requires that society be imagined as varied, and in ways that do not import status-like determinations of individual positions. Reckoning with functional differentiation is part of the process of imagining a society on such terms. Second, and related to the first point, the emphasis on multifaceted relations of individuals to society historically required a normative shift toward the affirmation of ordinary life.[62] Reckoning with functional differentiations in society is part of the emphasis on the everyday and the ordinary.

From the centrality of functional differentiation in everyday life, note, arise joint assumptions in law and novels about multiple human motives; law and novels differed not so much in their account of imaginable motives as in their dominant stories about where, when, and how those motives might play out.[63]

* * *

It is perhaps easiest to sense the centrality of the social division of labor to liberally-trained minds by observing its absence. For this third and final exercise in estrangement, consider Emily Bronte's 1847 novel, *Wuthering Heights*.

Wuthering Heights narrates stories of violent passion and destruction among the residents of two households: Wuthering Heights and Thrushcross Grange. Readers observing the centrality of homes in the novel have often sought to explain *Wuthering Heights*' relation to separate-spheres thinking. Here some argue that the novel offers a critique: *Wuthering Heights*, it has been said, undermines the assumptions perpetuated by separate-spheres ideology about the home as a benevolent safe haven by exposing patriarchal violence.[64] This is the kind of argument in which literature becomes a form of resistance, a counternarrative to hegemonic stories.

But the fictional homes of *Wuthering Heights*, particularly the Heights itself, are not some purified essence of the patriarchal power structure of the Victorian home. This point becomes clear if we note, for instance, the powerful women there and their complex, sometimes circular relations to men, or the men making the home the absolute center of their lives. If *Wuthering Heights* undermines separate-spheres thinking, it is because the novel radically defamiliarizes the ideology's basic structure of thought,

namely, the idea of a functionally differentiated world. To take the Heights as a representation of the home or private sphere, one must assume such a differentiated world. *Wuthering Heights* resists precisely this idea. The unfamiliar quality of the novel, the darkness surrounding its tale, is achieved through the estrangement of the social as an all-encompassing reality. The text relegates the social idea to a distant, threatening position, and with it the idea of functional differentiation.

How is functional differentiation estranged in *Wuthering Heights*? Diversity of human activity is kept at a minimum, with scant or no description, and at an irreducible distance from the novel's scenes. *Wuthering Heights* does not think about the home as one sphere in a more complex world; it denies the relevance and bans discourse concerning other activities, while turning the home into an entire world. Characters in *Wuthering Heights* live with a view inwards, into the house as a consuming interest and sole reality, rather than outwards, from the house toward an ever-expanding vision of a diversified social world, as characters do in many other novels. Social diversity and functional differentiation are simply irrelevant to the construction of the Heights' world.

Consider the figurative place of Gimmerton, a village in the vicinity of the two estates depicted in the novel. Gimmerton is represented as a site of diverse social activity: characters go there and back, transact business, obtain information, travel. And yet Gimmerton is remote. Its irreducible conceptual distance, despite its nearby geographical one, is marked by the utter lack of description of the village. Accounts of landscape, both natural and human-made, are central in *Wuthering Heights*, but Gimmerton is never allowed to enter through the concretizing visual sensory so integral to the novel.

Representations of commerce remain aloof throughout *Wuthering Heights* with the rest of the social idea. It is only at the close of the novel, when the social narrator of the tale, Lockwood, gains the upper hand, that we suddenly encounter explicit imagery of commercial dealings with the social world, represented in the servant Joseph's "dirty bank notes" (305)[65] and finally a gold coin contemptuously thrown at his feet by Lockwood. Until this point, transactions sealed by social institutions, despite their centrality to the plot (think of Heathcliff's property rights), had been inner-looking in terms of both characters and subject matter, centered on the Heights and Grange and their residents, and kept the idea of the "busy world" (247) at bay.

There is no functional multiplicity in the world of the Heights from which we might begin to think of continuous or discontinuous spheres of action.

This estrangement of the social division of labor serves as a reminder of its ubiquity elsewhere, in contract law as in many Victorian novels.

* * *

The assumption of, and anxiety about, functional differentiation is part of contract law's and novels' liberalism, their joint acceptance of specific attributes of the world as central for sense-making processes in which they both engaged.

The common liberalism of classical contract law and the novels discussed here, focused on the capitalist division of labor, has been fundamental enough to drive historical analyses, which have perfected the common focus into a separate-spheres argument, with too little attempt to differentiate the two conceptual commitments involved here: the commitment to make sense of the capitalist division of labor was *not* necessarily a commitment to separate spheres. Although in law the two commitments were entangled, in many novels the focus on the division of labor emerged in a single-arena outlook. This outlook was not an opposition to liberalism, but a different way of answering its key questions—a different way of putting liberalism to work. The centrality of functional differentiation, with its emphasis on the everyday and the ordinary, on multiplicity and variability, should not obscure the varieties of liberalism which could—and did—arise from it.

CONCLUSION

The overall picture of nineteenth-century law and novels is one of joint (liberal) questions and different (liberal) answers. Law and novels both sought ways to represent the capitalist division of labor, to make sense of, and render central, the functional differentiation between commerce, family, religious practice, politics, and other domains, none of which alone could dominate human experience, each of which was felt to have a place, diminishing or expanding, in a new world in which individual existence was the focal point and was to be conceptualized without metaphysics or birth rights, through relational formulations vis-à-vis a varied social world.

Legal discourse represented the capitalist division of labor through spheres answering to distinct and closed logics, among them the market as a sphere governed by economically rational exchange among self-interested agents.

Novels, at the same time, construed a different liberal worldview, one of an interconnected world of porous, socially embedded spheres, with the market as a domain of economic activity driven by social concerns and motives, and entangled in relational settings.

If we start out with the view of law and literature as mutually supportive discourses of the liberal hegemony, the view must be modified to acknowledge that liberalism does not have, and never had, one essential content, and that liberal notions like separate spheres must be disessentialized in historical accounts of the nineteenth century, their alternative meanings brought into the open.

If we start out with the view of law and literature as oppositional discourses, and rely on literature as a vantage point for critique of law's liberalism, the view must be modified to acknowledge that the dividing lines are not quite the ones we have come to know. The mutual entanglement of law and literature is more intricate than that. Although the novelistic outlook on sphere separations often emerges, or often can emerge, in normative visions distinct from the dominant ones found in law, we cannot do these visions justice along the familiar law/literature oppositions. Novels of the nineteenth century were liberally minded, their outlook neither necessarily benevolent nor antimaterialistic. Novels did not offer simply a critique of Victorian liberalism à la contract law; they formulated it differently.

Readings of common ideological currents in law and literature, like readings of oppositional stances toward hegemonic ideologies, risk wronging historical insight on two levels. First, they risk telling only half the story about law, literature, and the relation between them, underplaying either important differences between historical discourses or important commonalities. Second, and more importantly, both poles of the polarized framework of analysis in fact serve a single historical narrative, that of ideology, particularly classical liberalism, as a single essential entity, which one could either support or oppose. But liberalism was in fact a variety.

One can safely speculate that, if asked, interdisciplinary historians would identify differences or commonalities between Victorian law and literature (or other liberal discourses) existing at the margins of their accounts, which could be given more consideration (whether of the variety explored in this paper, or otherwise). Why, then, have these been kept at the margins? The forces driving polarized analyses are multifaceted. I note three kinds as a manner of opening up further discussion: one has to do with the anxieties

of interdisciplinarity; another with the salience of diachronic developments; a third with the attraction of binarisms.

The polarized framework of historical analyses seems to emerge, at least partly, from a scholarly need to provide implicit justification for the crossing of disciplines. Within legal studies, listeners surely accept with more ease a turn to still-disregarded discourses like literature if one can show that these were in fact a source of support or even inspiration for law's hegemonic effort. Listeners likewise accept with ease the turn to literature if it can be used to articulate historical critiques that law was facing and effacing. The more complex stories, which are neither clear convergence nor divergence, neither hegemony nor its opposition, require a lot more effort to gain a hearing. They lack automatic disciplinary justification.

Post-nineteenth-century developments are possibly another source of influence on historical analyses that converge on the story of separate spheres. In retrospect, Marx seems at some moments to have been prophetic; the material and emotional realties of twentieth-century market society appear to have validated some of the market critics' worst predictions about market alienation, and thus to reinforce a view of the market as a realm of disembedded economic rationality. Stories affirming this view of the market have also gained dominance in theoretical discourses, and not necessarily those critical of it, as is evident from the centrality of economic analysis in legal scholarship. Theoretical divergences from the rational actor model have been conceptualized in terms of deviation from that ideal, thereby, however, preserving its centrality as a reference point for market-theory debates. And so, the version of liberalism embedded in the story of Victorian separate spheres resonates with powerful experiences of later developments—material, emotional, and theoretical, confirmed by commentators even as they part ways in their normative evaluation of these developments. Analyses that converge on this version of liberalism, whether they tell a story of support or resistance, implicitly reconcile later historical developments with those of the nineteenth-century.

The era preceding the nineteenth century is likewise a source of influence, one implicating, it seems, primarily stories of commonality. Law and literature analyses are at once synchronic and diachronic. They engage Victorian discourses vis-à-vis one another on a synchronic plane, but also engage both vis-à-vis a past. An assumed common past (say, the feudal world, the ancien régime of credit, etc.) functions as a touchstone against which the synchronic

plane is illuminated. A felt break with the past in both law and literature thus underwrites the story of commonality, of a new liberal hegemony. Read against the past, the nuance of synchronic difference, especially difference falling short of ideological antagonism, gets lost.

Finally, the single arena is, metaphorically, a picture of all spheres painted gray, rather than black and white. The single-arena outlook accepts functional differentiations: it is a single *arena*, *not* a single sphere; at the same time, however, this outlook blurs the boundaries of spheres, represents actors in the market and elsewhere as persons embedded in relational settings, and converges the meaning of experience around common social concerns. The single-arena outlook, unlike a separate-spheres outlook, does not fall neatly into binaries informing Western thought, between emotionality and rationality, between other- and self-regarding, between social and economic ties, or what have you. Not only are binaries too familiar, they are also attractive for the conceptual clarity they enable. It is just possible, therefore, that we intuitively seek to make sense of the world through binaries. My argument, however, is that binarism comes with a price: it deflects understanding as well as critique.

The picture of nineteenth-century liberal thought was more complex than current accounts suggest; it requires letting go of some binarisms and acknowledging a history of *varieties of liberalism*.

The *varieties of liberalism* account is not an assertion of complexity for its own sake. Complexity is not, in itself, a normative end of historical analysis (though it is very often how it ends). But complexity can have normative content beyond basic historical accuracy. From a broadly ethical perspective, once the Victorian varieties of liberalism are acknowledged, any particular liberal outlook, as well as any particular set of liberal social arrangements that come down to us from the nineteenth century, must be evaluated vis-à-vis other liberal alternatives available at the era. The standard story of the nineteenth century, certainly for legal scholars, has been one in which the era's liberalism is evaluated and understood vis-à-vis the ideological antagonists of status and collectivism.[66] These evaluations evade the more difficult choices *within* liberalism, too readily assuming that liberalism was a single idea.

The complexity of the Victorian varieties of liberalism also carries a straightforward implication for political critique. At the level of political critique, both poles of existing analyses—law and literature as mutually supportive or as oppositional discourses—aim to produce critiques of liberalism yet

risk undermining their own projects. For one, if the historical narrative is partial, it might leave too much unexplained to have all the critical bite it could have. More troublingly, when it is successful, the critique establishes what it was erected to attack: an essential idea of liberalism, which might never have had all the historical hegemonic force the critique allows for.

The complexity involved in the varieties of liberalism checks against the essentializing and hegemonizing effect of existing history. It offers a political critique by questioning the hegemonic position of any specific liberal variety, and particularly the story of separate spheres. The point is not that there was opposition to separate-spheres thinking, but more simply, and fundamentally, that liberal thought did not commit to it.

Most broadly, the critical impulse behind much interdisciplinary work is often not simply the object of critique (as, here, classical liberalism), but the borders of disciplinarity itself. In legal studies, the object is often a reopening of legal stories through an engagement with disregarded discourses like literature.[67] But if the readings emerging from such reopening end up either polarizing discourses or denying the differences that emerge from historical disciplinary boundaries, they undermine the kinds of complications promised by interdisciplinarity.

Interdisciplinary analysis assumes a picture of culture as multiple signifying practices converging and diverging in intricate ways. As Susan Silbey has lately put it, "Variation . . . concerning the meaning and use of . . . symbols and resources is . . . expected because, at its core, culture 'is an intricate system of claims about how to understand the world and act on it.'"[68] Revealing and conceptualizing such complex pictures remains up to historical investigations. Law and literature studies within this framework hold further promises yet to unfold.

* For thoughtful comments on earlier drafts I am grateful to Ayelet Ben-Yishai, Roy Kreitner, participants of the Department of English Language and Literature Colloquium at the University of Haifa 2012, and an anonymous reader for *Law & Literature*. For financial support I am grateful to the Sacher Institute for Legislative Research and Comparative Law at the Hebrew University of Jerusalem.

1. Importantly, critical projects in law and literature rely on literature to expose "the literary" *within* law, in a specifically law-and-literature version of the indeterminacy argument. The law/literature oppositions here are thus complex; literature represents, in one sense, a methodology rather than simply a genre or discipline. Yet the oppositions are integral to the critical project, primarily as an account of power struggle in which repressive law has the upper hand, while literature remains an ineradicable irritant.

2. Austin Sarat & Jonathan Simon, "Cultural Analysis, Cultural Studies and the Situation of Legal Scholarship," in *Cultural Analysis, Cultural Studies and the Law*, eds. Austin Sarat & Jonathan Simon (2003), 1, 8.
3. Clifford Geertz, *Local Knowledge* (New York: Basic Books, 1983), 216.
4. David Kaufmann, *The Business of Common Life* (Baltimore: Johns Hopkins Press, 1995), viii. In a somewhat similar vein, David Thomas discusses cultural studies' critique of liberalism, particularly its universality as tending to rationalize privileges and exclusions. Thomas suggests that though history grounds these concerns, "history also shows that ideas and vocabularies can be put to widely varying and even contradictory uses." David Wayne Thomas, *Cultivating Victorians: Liberal Culture and the Aesthetic* (Philadelphia: University of Pennsylvania Press, 2004), 25.
5. Mary Poovey, *Making a Social Body* (Chicago: University of Chicago Press, 1995), ch. 1.
6. Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Cambridge MA: Harvard University Press, 1986), 8.
7. See Max Weber, *Economy and Society*, eds. Guenther Roth & Claus Wittich (New York: Bedminster Press, 1968 [1914]), ch. 4; Alan Macfarlane, *The Origins of English Individualism* (Cambridge: Cambridge University Press, 1978), 50–51.
8. For a review of the various positions see Macfarlane, *supra* note 7, ch. 2 & conclusion. Macfarlane himself argues that English capitalism, including private ownership of land, mobile labor, rational accounting, a profit motive, and a separation between "family and farm," dates at least as far back as the thirteenth century. The latest periodization should probably be credited to Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1967).
9. Zygmunt Bauman, *Liquid Modernity* (Cambridge: Blackwell, 2000), 4. On the melting of solids, see also Marshall Berman, *All that Is Solid Melts into Air: The Experience of Modernity* (New York: Simon & Schuster, 1982), itself echoing Karl Marx & Frederick Engels, *The Communist Manifesto* (1848).
10. See, e.g., Walter E. Houghto, *The Victorian Frame of Mind, 1830–1870* (New Haven CT: Yale University Press, 1957); Frances E. Olsen, "The Family and the Market: A Study of Ideology and Legal Reform," 96 *Harvard Law Review* 1497 (1983); Catherine Gallagher, *The Industrial Reformation of English Fiction* (Chicago: University of Chicago Press, 1985), 121–26; Leonore Davidoff & Catherine Hall, *Family Fortunes* (London: Routledge, 1987); Nancy Armstrong, *Desire and Domestic Fiction: A Political History of the Novel* (Oxford: Oxford University Press, 1987).
11. Marcel Mauss, *The Gift*, trans. W. D. Halls (New York: W.W. Norton & Company, 2000).
12. Poovey, *supra* note 5. For additional critiques see, for example, Josephine M. Guy, *The Victorian Social-Problem Novel: The Market, the Individual and Communal Life* (London: St. Martin's Press, 1996), 70–71 (arguing that specialization of disciplines was barely underway in the mid-nineteenth century, and that overlaps indicated and enabled board conceptual continuities in explanations of various aspects of the environment). From the direction of gender, the ideological construct's strict separation between men and women was undermined by women exceeding their ascribed sphere. See, e.g., Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740–1914* (Cambridge: Cambridge University Press, 2003) (showing women's central role in personal credit relations in the industrial and consumer revolutions); Lynda Nead, "Mapping the Self: Gender, Space and Modernity in Mid-Victorian London," in *Rewriting the Self*, ed. Roy Porter (New York: Routledge, 1997), 167 (arguing that separate spheres cannot be seen as an explanation for women's actual occupation and experience of the public domain); Sandra Berns, "Women in English Legal History: Subject (Almost), Object (Irrevocably), Person (Not Quite)," 12 *University of Tasmania Law Review* 26, 49–52 (1993) (distinguishing between the effects of separate-spheres ideology on middle, upper, and working class women (being more inhibiting for the latter)).
13. See for instance Gordon's comment that within the large definitional frame of capitalism based on private property "there have been many historical capitalisms. And there might have been thousands more still." Robert Gordon, "Critical Legal Histories," 36 *Stanford Law Review* 57, 85 (1984).

14. Poovey's study of the historical process of differentiation between literary and other genres dealing with the economy provides one possible explanatory frame for this plural picture. Mary Poovey, *Genres of the Credit Economy: Mediating Value in Eighteenth- and Nineteenth-Century Britain* (Chicago: University of Chicago Press, 2008).
15. Part II discusses classical contract law, focusing primarily on its origins in England. As citations should make clear, however, these origins have been crucial for American contract law, and studies often address English and American legal thinkers together when referring to classical contract.
16. Robert Joseph Pothier, The Law of Obligations, app. V. at 35 (Evans ed. 1806), cited in A.W.B. Simpson, "Innovation in Nineteenth Century Contract Law," in *Legal Theory and Legal History* (London: Hambledon Press, 1987), 171, 190, reprinted from 91 *Law Quarterly Review* 247 (1975).
17. Simpson, *supra* note 16; P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford: Oxford University Press, 1979), 399–400; D. J. Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford: Oxford University Press, 1999), 222.
18. Duncan Kennedy, *The Rise and Fall of Classical Legal Thought* (Washington: Beard Books, 2006), 184–205; see also Atiyah, *supra* note 17, at ch. 21 (discussing the classical model's strict distinction between contractual and noncontractual liabilities). Kennedy also explains the emerging normative significance of market vis-à-vis nonmarket relations: "When Austin and the analytical jurists who followed him, argued for the relegation of the law of persons to the peripheral categories of 'abnormal persons,' quasi-contract and special instances of tort liability, they reflected the conviction that the family relations were no longer either conceptually or practically central to law." Kennedy, *supra*, at 193.
19. Roy Kreitner, *Calculating Promises* (Stanford CA: Stanford University Press, 2007), ch. 1. For another discussion of the new focus on promise as the source of contract in the nineteenth century, see Atiyah, *supra* note 17, at 146 (describing the nineteenth-century understanding of the entire field of contractual relations around promises; until the nineteenth century, argues Atiyah, a promise was neither a necessary nor a sufficient condition for the existence of a legal duty). A less dramatic formulation might suggest that the process by which promise became the focal point of contract had reached its zenith in the nineteenth century. See, e.g., E. Allan Farnsworth, "The Past of Promise: An Historical Introduction to Contract," 69 *Columbia Law Review* 576 (1969); see also Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley: University of California Press, 1997), 33–34 (discussing the link between promise and contract as a recent one, emerging in the second half of the eighteenth century). Classical treatises on contract are telling of the focus. Take, for example, Pollock's leading treatise, stating that "the expression of intention . . . includes the particular kind of expression which is called a promise. We have as the proper groundwork of contract a promise determined by the acceptance of a proposal." Sir Frederick Pollock, *Principles of Contract at Law and in Equity* (London: Stevens and Sons, 1876), 5. Or take Anson: "We are always in the habit of considering that an essential feature of a contract is a *promise*. . . . A promise which a man is legally bound to perform creates an obligation. . . ." Sir William Reynell Anson, *Principles of the English Law of Contract* (Oxford: Clarendon Press, 1879), 4.
20. Kreitner, *supra* note 19. Atiyah similarly notes how consent was increasingly sought and found by courts inclined to impose liability. Atiyah, *supra* note 17, at 455–56.
21. Kreitner, *supra* note 19, at 34, 91; see also Atiyah, *supra* note 17, at 451–52 (explaining that liberality or beneficence [which are the grounds for a gift] were considered a good cause but not sufficient consideration. Atiyah, however, does not discuss the constructive effect on views of the market emerging from this distinction, but rather seems to think that consideration was gradually stripped of any important role in contract law). Note that leaving gifts outside contract law did not entail only a conceptual separation between market and nonmarket relationships, but one that made family and friends inferior contestants in fact when they happened to compete with market creditors. See W. R. Cornish & G. de N. Clark, *Law and Society in England 1750–1950* (London: Sweet & Maxwell, 1989), 207–8. See also the discussion *infra* note 22.

22. Thus the discouragement of contract in family and friendship settings. For instance, norms of interpretation reversed the presumption of intent to be legally bound in family and friendship contexts. Unger, *supra* note 6, at 62. The doctrine of intent to create a legal obligation was a nineteenth-century innovation, which, as Simpson had argued, explained in terms of the will theory the absence of contractual liability for domestic and social arrangements. Simpson, *supra* note 16, at 189. Peter Goodrich traces the separation of the sphere of friendship from contract to an old separation of jurisdiction between religious and secular law. Ecclesiastical case law placed friendship (including domestic relations) within the jurisdiction of the church, giving primacy to patriarchal control—an effective Alsatia, as Goodrich calls it. Peter Goodrich, "Friends in High Places: Amity and Agreement in Alsatia," 1 *International Journal of Law in Context* 41 (2005). Goodrich aligns with studies sensitive to the problematics of separate spheres for domestic relations, and particularly for weaker persons in them. The point to note from my perspective is the effect of the active rationalization of separations, and their centrality for nineteenth-century legal thinking, for the image of the market.
23. Roscoe Pound, "The End of Law as Developed in Juristic Thought" (pt. 2), 30 *Harvard Law Review* 201, 209–10 (1917).
24. Henry Sumner Maine, *Ancient Law*, ed. Ashley Montagu (Tucson: University of Arizona Press, 1986).
25. Albert Venn Dicey, *Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century* (London: Macmillan, 1962), 151. For a similar understanding in the American context, see Amy Dru Stanley's discussion of William Graham Sumner, who believed that the ascendance of contract would destroy bonds of personal dependence based on status, law, and custom. Amy Dru Stanley, *From Bondage to Contract* (Cambridge: Cambridge University Press, 1998), 1.
26. For a discussion of the historical misinterpretation of the relation of status to liberal ideals, see Anat Rosenberg, "Reconstructing Ideology's Force: Liberalism in the Promise of Marriage" (June 2012, copy available from author).
27. Kennedy, *supra* note 18, at xxxvi.
28. Robert B. Seidman, "Contract Law, the Free Market, and State Intervention: A Jurisprudential Perspective," 7 *Journal of Economic Issues* 533, 555 (1973). For additional discussions of contract law's modeling of a competitive market, see for example Lawrence M. Friedman, *Contract Law in America* (Madison: University of Wisconsin Press, 1965), 22 ("the law of contract was the legal reflection of that market and naturally took on its characteristics"); Atiyah, *supra* note 17, at 435–37 (arguing that the model was based on the free market bargaining process, which was to give full rein to the greater skill and knowledge of those who calculated risks better); Melvin A. Eisenberg, "Why There Is No Law of Relational Contracts," 94 *Northwestern University Law Review* 805, 808 (2000) ("[C]lassical contract law rejected principles of unfairness, which typically have their fullest application in transactions that occur either off-market or on very imperfect markets and have little application to contracts made between strangers on perfect markets.").
29. The tension between freedom of choice and contractual enforcement is often used as a vantage point for the critique of the classical model. See, e.g., Betty Mensch, "Freedom of Contract as Ideology: P. S. Atiyah's *The Rise and Fall of Freedom of Contract* (1979)," 33 *Stanford Law Review* 753 (1981) (book review); Mark Pettit, "Freedom, Freedom of Contract, and the 'Rise and Fall,'" 79 *Boston University Law Review* 263 (1999); R. B. Ferguson, "Commercial Expectations and the Guarantee of the Law: Sales Transactions in Mid-Nineteenth Century England," in *Law, Economy, and Society, 1750–1914*, eds. G. R. Rubin & David Sugarman (London: Professional Books, 1984), 192.
30. Explanations offered for objectivism include the avoidance of factual inquiries and mistakes; the promotion of uniformity and predictability, tied with the limitation of the scope of jury involvement; the imposition of absolute liability in contract (limiting the range of excuses); and the limitation of judicial policing of contract through this pseudo-scientific measure of protecting reliance. See Atiyah, *supra* note 17, at 459–60; Morton J. Horwitz, *The Transformation of American Law, 1870–1960* (Oxford: Oxford University Press, 1992), 35; Grant Gilmore, *The Death of Contract* (Columbus: Ohio State

University Press, 1974), 44–45; and Kennedy, *supra* note 18, at 239–40, respectively. These explanations all point to a commitment to market security from different directions. Note that Atiyah's explanation (avoiding factual inquires) is not necessarily so intended. Atiyah seems to consider objectivism as part of the "fall" of the classical model of contract and the re-emergence of ideas of reliance. For a view casting doubt on the dominance of objectivism in contract case law, at least in the American context, see Kreitner, *supra* note 19, at 111. It appears that legal objectivism, which casts doubt on the very meaning of contract prevalent in the nineteenth century, only comes in the early decades of the twentieth century, when internal critiques of contract cease upon objectivism's contradictions. Until then, objectivism is a practice of interpretation that, when theorized, falls back on the language and logic of the will theory that it arose to strengthen. See Horwitz, *supra*, at 35–39.

On the legal construction of the market through a prudence of distrust, see Unger, *supra* note 6, at 66.

31. Berns, *supra* note 12, at 43; John V. Orth, "Contract and the Common Law," in *The State and Freedom of Contract*, ed. Harry N. Scheiber (Stanford CA: Stanford University Press, 1998), 44, 52 ("the contract of marriage carries the parties, as it were, to the threshold of their new status, but not beyond"). For an expansive account of models of marriage in the Anglo-American tradition, see John Witte Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Louisville: Westminister John Knox Press, 1997). Witte argues that the contractarian model of the Enlightenment, in which marriage was in essence a voluntary bargain whose terms were set by the parties themselves, was adumbrated in the eighteenth century, elaborated theoretically in the nineteenth, but implemented legally only in the twentieth century. The model could not transform the law of the nineteenth century, though it induced greater protections for wives and children. *Id.* at 10, 194–215.
32. Finn describes the regime, finally abolished with full contractual capacity given to married women only in the interwar years. Finn, *supra* note 12, at 265–66, 325. See also Berns, *supra* note 12, for the history of the doctrine.
33. Anson made the logic explicit when he excluded from treatment transactions that were "not such as we ordinarily term Contracts." Among these were "[a]greements which affect a change of status immediately upon the expression of the consent of the parties, such as marriage, which, when consent is expressed before a competent authority, alters at once the legal relations of the parties in many ways." Sir William Reynell Anson, *Principles of the English Law of Contract* (Oxford: Clarendon Press, 1879), 3; Kennedy, *supra* note 18, at 204–5.
34. For an account of the public debate about marriage as contract, see G. R. Searle, *Morality and the Market in Victorian Britain* (Oxford: Oxford University Press, 1998), ch. 7.
35. Atiyah, *supra* note 17, at 401.
36. Susie L. Steinbach, *Promises, Promises: Not Marrying in England, 1780–1920* (May 1996) (unpublished PhD dissertation, Yale University) (on file with the Yale University Library).
37. Ginger S. Frost, *Promises Broken: Courtship, Class and Gender in Victorian England* (Charlottesville: University of Virginia Press, 1995), 17; Saskia Lettmaier, *Broken Engagements, The Action for Breach of Promise of Marriage and the Feminine Ideal, 1800–1940* (Oxford: Oxford University Press, 2010). Note that Steinbach does not deny the gender bias of the action for breach of promise. In fact, her analysis turns on gender and class no less than those of Lettmaier or Frost. Instead, Steinbach argues that women were able to bring and win suits in large numbers due to the influence of contract (and sentiment).
38. For a detailed account of the competing and complementing frameworks involved in conceptualizing the promise of marriage, those of affection, contract, and status (primarily gender and class), see Rosenberg, *supra* note 26.
39. Frost distinguishes between the economic and gender aspects of the action, arguing that courts were biased toward women as opposed to men plaintiffs. My suggestion is that this bias is inseparable from the economic meanings attached to the marriage contract, rather than external or different from them. For Frost's distinction between economic meanings and gender-bias, see Frost, *supra* note 37, Conclusion.

40. *Id.*
41. The "fall" of classical thought in law is beyond the scope of this paper. Suffice it to say that in the nineteenth century encroachments of contract, today habitually seen as the rise of "social law," did not have a significant effect on the legal version of sphere separations. They were indeed conceptualized as encroachments, or interventions, in which the public *interferes* with the private—counterprinciples, if you will.
42. Raymond Williams, *The English Novel from Dickens to Lawrence* (Oxford: Oxford University Press, 1971), 11.
43. Ian Watt, *The Rise of the Novel* (Berkeley: University of California Press, 1957), 63–64.
44. See, e.g., Franco Moretti, *The Way of the World* (London: Verso Books, 2000) (discussing the English novel's tendency, together with law, to legitimate the established order); Daniel Cottom, *Social Figures* (Minneapolis: University of Minnesota Press, 1987) (arguing that the realist novel was one of the major forms of the rational representation of a universal order, which was in fact a projection of the newly dominant English middle class); Leo Bersani, *A Future for Astyanax: Character and Desire in Literature* (London: Little, Brown, 1978), ch. 2 (arguing that the psychological readability of characters in novels served to guarantee the established social order); Deidre Shauna Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998) (arguing that nineteenth-century literature individuated citizens and at the same time purveyed assurances about human homogeneity, and was thus involved in the transition to middle class hegemony); Irene Tucker, "What Maisie Promised: Realism, Liberalism and the Ends of Contract," 11 *Yale Journal of Criticism* 335 (1998) (arguing that the realist novel functions as a cultural instrument by which the rationalization of contingency takes place, thus enabling the agency of subjects with limited knowledge and control, and sustaining the idea of autonomy, somewhat like contract); Patrick Brantlinger, *Fictions of State: Culture and Credit in Britain, 1694–1994* (Ithaca NY: Cornell University Press, 1996), 146 (arguing that novels, even when critical of the social evils of capitalism, underwrite the naturalness and stability of the social realm); W. J. Harvey, *Character and the Novel* (London: Chatto & Windus, 1965), 24 ("One of the few Marxist generalizations about literature to hold up reasonably well when put to the test of detailed historical examination is the thesis that the development of the novel is intimately connected with the growth of the bourgeoisie in a modern capitalist system. From this social process derive the assumptions and value we may conveniently if crudely lump together as liberalism."); Linda Shires, "The Aesthetics of the Victorian Novel: Form, Subjectivity, Ideology," in *The Cambridge Companion to the Victorian Novel*, ed. Deidre David (Cambridge: Cambridge University Press, 2001), 61, 65 ("[The realist novel's] hero or heroine is molded to the bourgeois ideal of the rational man or woman of virtue."); Joseph W. Childers, "Industrial Culture and the Victorian Novel," in *The Cambridge Companion to the Victorian Novel*, *supra*, at 77, 77–78 ("[A] neat separation of industrialism and the novel is nearly impossible. . . . Each looked to the other for models of effecting and controlling as well as understanding change.").
45. Gallagher, *supra* note 10, at 114.
46. Moretti, *supra* note 44, at 216–21. For additional discussions of novels' substantiation of the public/private distinction, see Alexander Welsh, *George Eliot and Blackmail* (Cambridge MA: Harvard University Press, 1985), ch. 4 (arguing that three conditions affected the need for privacy: a self-regulating economy, social mobility and choice of occupation, and representative government. The nineteenth-century novel, in turn, dramatized the growing fear of publicity, on which privacy relied for its protection.); Peter Brooks, *Body Work* (Cambridge MA: Harvard University Press, 1993), ch. 2 (discussing the paradox of privacy in novels, a notion consubstantial with its violation).

    The study of domesticity in novels is another area of rich analyses of sphere separations. See, e.g., Nancy Armstrong, *How Novels Think: The Limits of British Individualism from 1719 to 1900* (New York: Columbia University Press, 2005) (arguing that novels served to protect the ideology of individualism—the claim that one could compete successfully with men in the public sphere and serve as caretaker to their

dependents—by masking the contradictions involved in that ideology); Armstrong, *supra* note 10 (arguing that novels made the political move that solidified the rise of the middle classes through the creation of the household as an apolitical realm that served as antidote to politics and the marketplace).

47. See, e.g., John Plotz, *The Crowd: British Literature and Public Politics* (Berkeley: University of California Press, 2000), ch. 6 (questioning the valuation of privacy in novels and pointing to a relation between private freedom and public crowds).
48. All references are to Anthony Trollope, *The Way We Live Now*, ed. Frank Kermode (New York: Penguin Books, 1994).
49. The term is Baudrillard's, but I use it in an almost opposite sense. Baudrillard attributed floating causality to the manipulation in which circles of causality deny the location of an origin or reference, creating a hyperreal simulation. My use of "floating causality" is unconcerned with the question of circularity or departure from reference. Rather, my concern is with a problematization of what one might, under a separate-spheres conception, expect to find in the set of relevant causes. On Baudrillard's use see Jean Baudrillard, "Simulacra and Simulations," in *Selected Writings*, ed. Mark Poster (Palo Alto CA: Stanford University Press, 1988), 166; Kim Sawchuk, "Semiotics, Cybernetics and the Ecstasy of Marketing Communications," in *Baudrillard: A Critical Reader*, ed. Douglas Kellner (New York: John Wiley & Sons, 1994), 89, 105.
50. All references are to Thomas Hardy, *The Mayor of Casterbridge* (London: Penguin Popular Classics, 1994).
51. Interestingly, Henchard's bankruptcy is often viewed by critics as conscientious. See, e.g., Albert J. Guerard, "Henchard's Self-Condemnation," in *The Mayor of Casterbridge*, ed. Phillip Mallett (New York: Norton, 2001), 326, 328, reprinted from Albert J. Guerard, *Thomas Hardy: The Novels and Stories* (Cambridge MA: Harvard University Press, 1949). Such readings seem to be rooted in the isolation of the bankruptcy event from its narrated entanglements, as the creditors themselves do in *The Mayor of Casterbridge*.
52. All references are to Elizabeth Gaskell, *Ruth*, ed. Alan Shelton (Oxford: Oxford University Press, 1985).
53. Many of the novel's structures and themes gain meaning through this framework. For instance, *Bleak House*'s eccentric characters are from this perspective a formal expression of their thematic failure to become involved: failing to become involved within the story, eccentrics never become "real." *Bleak House's* famed critique of the legal system is likewise an expression of the concept of interdependence: Chancery falsely conceives of itself as a closed system. What comes into law from other spheres of life loses all sense; its representation ceases to be a representation and becomes an independent essence without referent, a state of affairs represented in the novel as a monstrosity.
54. All references are to Charles Dickens, *Bleak House* (London: Penguin Classics, 2003).
55. All references are to George Eliot, *Middlemarch: A Study Of Provincial Life*, ed. David Carroll (Oxford: Oxford World's Classics, 1996).
56. See *supra* note 46 and accompanying text.
57. J. Jeffrey Franklin, "Anthony Trollope Meets Pierre Bourdieu: The Conversion of Capital as Plot in the Mid-Victorian British Novel," 501 *Victorian Literature & Culture*, 510 (2003).
58. The division of labor is more familiarly discussed as the *background* of modern law and literature than as their effect. Yet, like other social realities, the division of labor gains meaning and comes into being as a significant part of human experience by virtue of its representation and interpretation in sites of social thinking, like law and novels.
59. Weber, *supra* note 7.
60. Emile Durkheim, *The Division of Labor in Society*, trans. George Simpson (New York: the Free Press, 1933) (depicting the rise of modern society through the notion of organic solidarity based on a division of labor). Consider also Durkheim's basic insight that exchange always presupposes a division of labor.

Id. at 125. At the historical *Age of Contract*, when contract becomes central to the social imagination, the centrality of the division of labor is a basic.

61. Marx targeted the division of labor as the basic condition to be abolished under communism, and identified it as the primary source of social conflict and alienation. For a discussion, see Leszek Kołakowski, *Main Currents of Marxism*, trans. P. S. Falla (New York: W.W. Norton, 2005), ch. 8.
62. Charles Taylor, *Sources of the Self* (Cambridge MA: Harvard University Press, 1989), Part 3.
63. And so, in terms of the discussion of the psychology of subjects under capitalism, one could perform an analysis similar to that proposed in this paper of identifying commonalities as well as differences in the construction of subjects in law and novels.
64. See, e.g., Terry Eagleton, "Myths of Power in *Wuthering Heights*," in Emily Brontë, *Wuthering Heights*, ed. Patsy Stoneman, (Basingstoke UK: Macmillan, 1993), 118, reprinted from Terry Eagleton, *Myths of Power* (Basingstoke UK: Macmillan, 1976); Naomi M. Jacobs, "Gender and Layered Narrative in *Wuthering Heights*," *in* Brontë, *supra*, at 74, reprinted from 16 *Journal of Narrative Technique* (1986); Lyn Pykett, "Gender and Genre in *Wuthering Heights*: Gothic Plot and Domestic Fiction," in Brontë, *supra*, at 86, reprinted from Lyn Pykett, *Emily Bronte* (London: Macmillan, 1989).
65. All references are to Emily Brontë, *Wuthering Heights* (New York: Barnes & Noble Classics, 2004).
66. For a detailed elaboration of the story, see Anat Rosenberg, "Contract's Meaning and the Histories of Classical Contract Law" (copy available from author).
67. Bradin Cormack is here succinct: "[L]egal analysis becomes critical by reopening the exclusionary discourse of law onto a more complex scene than that remembered as the image the law produces through and as its own historiography." Bradin Cormack, *A Power to Do Justice* (Chicago: University of Chicago Press, 2007), 28 (discussing Peter Goodrich's work).
68. Susan S. Silbey, "J. Locke, Op. Cit.: Invocations of Law on Snowy Streets," (January 3, 2012) *Journal of Comparative Law*, forthcoming, available at http://ssrn.com/abstract=1978790 (citing where indicated Constance Perin, *Shouldering Risks* (Princeton NJ: Princeton University Press, 2005), xii).