

# Public Judgment and Private Justice in Wilkie Collins's *Man and Wife* and *The Law and the Lady*❖

Wen-lin Lan\*

## ABSTRACT

As revealed in Wilkie Collins's *The Woman in White* and *No Name*, English law is never perfect and seldom fair from the novelist's perspective; evidently, Scottish law inflames Collins's enthusiasm for juridical reforms. Critics, including Collins's contemporaries like Margaret Oliphant, and modern ones like Lyn Pykett and Jenny Bourne Taylor, note that the novelist's "didactic" purpose and sense of "social commitment" become much more "explicit" and "self-conscious," compared with that found in his earlier novels. Instead of ridiculing Scottish law in *Man and Wife* and *The Law and the Lady*, Collins unfolds the complexities found within the intersections of the law, the public, and the individual. This essay aims to probe these relationships, in which the public play a greater role in judgment than the jury. Collins's indignant criticism about Scottish law—the irregular Scotch marriage and the Scotch verdict in particular—reveals a deconstruction of the conventional boundary between the public and the individual. Owing to this deconstruction, justice, usually being a communally conceived ideal, is brought into a private relationship between husband and wife.

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❖ This essay is partially revised from chapter 4 of my doctoral dissertation. Chapter 4 of my dissertation focuses on juridical ambiguity shown by Scottish law, but this essay is intended to explore the public-private dynamic of Scottish law in Collins's novels. Besides citations, other similar but not directly quoted passages will be indicated or explained in footnotes to distinguish my reference to my dissertation, including plot summary, some textual analysis of the same passages from the novels, and some arguments that look alike but aim to bring out different conclusions.

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Wen-lin Lan, Project Assistant Professor, The Center for General Education, Ching Kuo Institute of Management and Health, Taiwan ([wllan059@gmail.com](mailto:wllan059@gmail.com)).

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As revealed in Wilkie Collins's *The Woman in White* and *No Name*, English law is never perfect and seldom fair from the novelist's perspective; evidently, Scottish law inflames Collins's enthusiasm for juridical reforms. As Collins himself exclaims in the preface to *Man and Wife*, "the fiction is founded on facts, and aspires to afford what help it may towards hastening the reform of certain abuses which have been too long suffered to exist among us unchecked" (5). Critics, including Collins's contemporaries like Margaret Oliphant, and modern ones like Lyn Pykett and Jenny Bourne Taylor, note that the novelist's "didactic" purpose and sense of "social commitment" become much more "explicit" and "self-conscious," compared with that found in his earlier novels (Oliphant 628; Pykett 40; Taylor viii). Instead of ridiculing Scottish law in *Man and Wife* and *The Law and the Lady*, Collins unfolds the complexities found within the intersections of the law, the public, and the individual. Scottish law allows the public to play a greater role in judgment than the jury. It connects individuals by endowing them with the role of being individual members of the public whose duty includes making or executing legal judgments even outside the courtroom. In contrast with the public involvement in legal judgment, the probable achievement of justice is consigned to the individual sphere, more precisely, the private sphere of married spouses. Since justice was still believed to be the telos of the legal institution in the Victorian age (Dolin 79), justice sought under the Scottish juridical circumstances illuminates the private aspect of the idea of justice.

To a great extent, Wilkie Collins's disapproval of Scottish law is rooted in an anglocentric ideology of sustaining a united image of the British Empire in the nineteenth century.<sup>1</sup> Criticisms about Collins's attitude toward imperialism are more common of his other novels, *Armadale* and *The Moonstone*. In *Armadale*, the red paisley shawl owned by the charming villainess Lydia Gwilt, according to Suchitra Choudhury, refers to the Indian Mutiny in 1857, and thus symbolizes the "mid-century anxieties of class and empire" (817). In addition to Lydia's shawl, a colonial relationship can be observed in her service as a maid for Miss Blanchard on the island of Madeira: brought far away from her homeland, the young maid is in fact colonized by her mistress (Young-Zook 241). *The Moonstone*, the novel written right after *Armadale*, depicts tensions

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<sup>1</sup> The English-centered ideology in Collins's illustration of Scottish law has been pointed out in my dissertation (Lan 156-57), but the novelist's reassessment of foreign Other is not included there.

between Britain and India more directly. In *The Moonstone*, a mysterious theft in an English household is wrapped with a prologue about the past pillage in India and an epilogue about the return of the plundered Moonstone to India. Critics contend that *The Moonstone* shows Collins's "hesitation as a critic of empire" and even the novelist's "positive attitude" toward the Oriental Other (Al-Neyadi 185; Nayder, "Empire" 446). This hesitation or positive reassessment of the Other stands in striking contrast to the illustration of Indians in *The Perils of Certain English Prisoners*, collaborated by Charles Dickens and Wilkie Collins in the same year of the Indian Mutiny in 1857. According to Lillian Nayder, however, colonialist stereotypes of Indians are intended by Dickens, while Collins's real thought is found in the later published article, "A Sermon for Sepoys," in *Household Words* on February 27, 1858 ("Collins" 144-45). Being a response to the Indian Mutiny, "Sermon" has "a more religious and philosophical tone" in scrutinizing the "Christian means" of "taming the human tigers" in India (Collins, "Sermon" 244; Tomaiuolo 116). Collins's "Sermon" and novels like *Armadale* and *The Moonstone* reveal the novelist's awareness of social anxiety in regard to the national glory and aggrandizement of the British Empire.

Collins's doubt about the legitimacy of colonialization appears to be primarily manifest in his consideration of British domination over distant foreign lands. When it comes to the problematic union between Scotland and England, Collins apparently advocates imperial unity without reservation. According to the Treaty of Union of Scotland and England in 1707, the two realms were united into one kingdom, while Scotland maintained its institutions of church, law, and education. Such institutional independence, to some extent, nurtured "a Scottish national identity" and the pride of having a "better" or more beneficial legal system compared with the English one (Farmer 21-22). Scholars have interpreted the relationship between Scotland and England after 1707 as "internal colonialism" or "cultural imperialism" (Davidson 91-102). This political union with institutional independence may explain why Collins does not show hesitation about imperialist domination of Scotland or positivity in representing the Scottish Other. Unlike India, an Oriental Other far from England, Scotland is a geographical neighbor and borderland and may be more easily incorporated politically into the imperial self. As Anne Longmuir suggests, the Otherness of Scotland reveals a kind of "cultural schizophrenia," divided between "the sophisticated and civilised Lowlands and the barbaric and

wild Highlands” (166). From the English perspective, the attempt to dominate Scotland can be justified as a kind of self-control. Based on the imperialist ideology to eliminate the heterogeneity in the empire, Collins “encourages readers to think of Scotland as ‘other’” and makes his readers “complicit in the imperial project of reforming Scots law” (Husemann 83).

While Collins’s English identity and the history of the Scotland-England union ordain the novelist’s criticism to be an imperialist one to some degree, Scottish law in Collins’s novels does not necessarily represent a colonized or marginalized position. Rather, Scottish law admits to a possibility of “undecidability” that introduces “epistemological uncertainty and irrationality” into English law (Longmuir 170-71). The uncertainty and irrationality in Scottish law, in Geoffrey Baker’s contention, denote an epistemological differentiation of English and Scottish legal institutions: as English law developed toward evidentiary practices in the nineteenth century, Scottish law insisted on the communal value of witnesses (240, 245). That is, besides the objects rendered as evidence, the witnesses’ knowledge of what happened acquires legal validity in Scotland. In short, Scottish law acknowledges heteroglossic facts, thereby being deemed uncertain and irrational.

The undecidability, as demonstrated through irregular marriage and the verdict “Not Proven,” disturbs Collins, for it challenges the presumed foundation of the law, i.e., some systematic, inferential kind of reasoning to distinguish between right and wrong. In this way, Scottish law actually goes further than being the Other undermining the unity and rationality of the English law. In brief, it is the Other flouting the expectations of some cogent rationality behind human law. All types of governing rules are supposedly based on “either religious/moral reason or secular/juridical reason”:

The religious/moral reason denotes the tradition of natural law, and in practice, it depends on religious commandments, instinctual kindness, or communal conventions to psychologically restrain human vices via the metaphysical premise of divine/natural justice. The secular/juridical indicates the institutional rules that are supposed to be articulately conveyed or written down for every member to [refer to and] obey. The secular/juridical reason may be inspired by the religious/moral reason and forms a common appealing to

kindness or justice, but it is mainly configured by human minds and [their] self-conscious participation . . . . Scottish law exactly pinpoints the [problematic] participation of human minds in establishing and preserving the law. The juridical reason is inevitably involved in human decisions, and these decisions, according to Walter Benjamin's "Critique of Violence" and Giorgio Agamben's review, are the practices of violence. (Lan 158)<sup>2</sup>

Be it law-making or law-preserving, constituting or constituted power, the violence essential to the law disillusiones the optimistic anticipation of justice as the natural consequence under the governing rules founded on reason. In other words, while the law still regulates human life, justice is to be found elsewhere.

Irregular marriage in *Man and Wife* and the verdict "Not Proven" in *The Law and the Lady* demonstrate the problematic participation of human minds. On the one hand, the ordinary practices of law are executed by legal professionals like judges and lawyers, and their decisions are the governing violence that often afflicts laypeople in Collins's novels. On the other hand, since the law typically fails to result in justice, the protagonists' endeavor to subvert the official decision suggests an extrajudicial possibility of retrieving the ideal of justice in human society. Significantly, irregular marriage and the verdict "Not Proven" reveal the unusual recognition of laypeople's participation in juridical judgment in Scottish law: the wide acknowledgment of witnesses and the ambiguous verdict to be judged by every community member.

## **I. The Irregular Scotch Marriage in *Man and Wife***

The "Scotch marriage" that Wilkie Collins sternly criticizes in *Man and Wife* particularly refers to an "irregular" type of marriage whose validity had been sanctioned in Scotland but abolished in England in the nineteenth century.

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<sup>2</sup> Regarding the dynamic between law-making and law-preserving powers, please see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford UP, 1998), pp. 39-41, 63-65; Walter Benjamin, "Critique of Violence," *Selected Writings*, edited by Marcus Bullock and Michael W. Jennings, vol. 1 (Belknap, 1996), pp. 240-42.

Nineteenth-century Scotland saw two types of marriage: regular and irregular.<sup>3</sup> The regular type of marriage was “officially registered” and “performed by clergymen or other persons authorized to perform marriages” (Maceachen 127). Although the regular marriage in Scotland still differed from that in England in some details such as no need of taking place in a church building (Gordon 509), the regular marriage in Scotland has conformed to the modern standard of a formal marriage, which consists of a registration in the official department and a wedding ceremony with the presence of a third party. Contrarily, irregular marriage derived from a medieval heritage based on “the canon law doctrine that exchange of consent was sufficient to constitute marriage” (508). England renounced this medieval heritage by Hardwicke’s Act of 1753, whereas the last case of irregular marriage had remained legally valid in Scotland until 2006 (508-09).

The peculiarity of the Scotch marriage dwells on its renunciation of legal and public formality, so that the gap between consent to marry and fact of being married is reduced to as little as possible. At the beginning of the main story in *Man and Wife*, Anne Silvester, who works as a governess for her bosom friend Blanche Lundie, is stuck in the dilemma of compelling Geoffrey Delamayn to keep his promise of marrying her (Collins, *Man* 76).<sup>4</sup> Even though she found him “a coward and a scoundrel,” Anne must marry this unworthy man because she flung “the prime of her womanhood” away on him so that “her reputation is at his mercy” (76-77). In the scene of quarreling with Anne in a private meeting, Delamayn gives his promise to marry her, indeed, but claims that he would not wish to risk losing his father’s financial sponsor for marrying a

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<sup>3</sup> This paragraph is intended to elucidate the differences between regular and irregular marriage through a literature review. Therefore, this paragraph—with some wording differences—is very similar to the explanation of the two types of marriage in my dissertation based on the same resources (Lan 159).

<sup>4</sup> In fact, Wilkie Collins significantly designs a hereditary framework similar to that in *Armada!e*: Anne and Blanche share the same names as their mothers’ and similar fates. Anne’s mother in the prologue undergoes her husband’s desertion because of the particular regulations of the Irish marriage. Obviously, Collins uses Anne’s mother’s misery to foreshadow Anne’s misery and to condemn the non-English forms of marriage in the British Empire. Nevertheless, the mother’s marriage is annulled for the improper date of the husband’s religious conversion to Roman Catholicism, but Anne’s plight is purely related to the widely inclusive conditions of forming an irregular Scotch marriage. Despite the plot similarity, the stories of Anne and her mother are essentially different problems caused by different legal technicalities. Since this essay focuses on the Scottish law illustrated in Collins novels, Anne’s mother’s misery will not be discussed here.

Like the previous paragraph about regular and irregular marriage, this paragraph provides the plot summary related to the theme of Scotch marriage, so it is similar to the description in my dissertation yet with wording differences (Lan 162-63).

governess (77, 79). To prevent the possible scandal as Anne expresses her inclination to suicide, Delamayn proposes a “private marriage” (81). Then, Anne conceives of a plan to realize the legal fact of being married: she will go to an inn at Craig Fernie; later, Delamayn should look for her there in the name of her husband (85). Based on the Scottish marriage law, “[a] man and a woman who wish to be married (in Scotland) have only to declare themselves married—and the thing is done” (86).

The “private marriage” in Delamayn’s proposal, as can be seen in Anne’s plan of meeting at an inn, demonstrates the irregular Scotch marriage in practice. Anne’s plan evidently aims to cause a fact of irregular marriage *per verba de praesenti*, namely, “by some present interchange of consent to be thenceforth man and wife, privately or informally given” (*Report* xvii). According to *Report of the Royal Commission on the Laws of Marriage*, an official investigation in 1868 into the marriage laws concerning British subjects, a present interchange of consent can be regarded as an irregular marriage in the following situations:

. . . whether the consent is declared in the most open and authentic manner before a justice of the peace, . . . or before a Civil Registrar, or before any unauthorized person taking upon himself to celebrate marriages (as used to be the practice at Gretna Green), or in the most secret and private manner between the parties themselves, with or without witnesses, and with or without any subsequent open acknowledgment or matrimonial cohabitation. (xviii)

The above quotation demonstrates how much attention the irregular Scotch marriage pays to the situationality of the law. Irregular marriage approves of consent under various situations, and the last situation listed above even shows it not necessary to declare mutual consent to get married in a public place.

The legal permission of getting married through exchanging consent privately aggravates the controversy of irregular marriage. In *Man and Wife*, Collins accuses irregular marriage of being “a trap to catch unmarried men and women” by a simple announcement with “the infamous absence of all needful warning, of all decent precaution and restraint” (132). Moreover, the private exchange of consent ostensibly violates the fundamental assumption of



marriage as an open social act. As shown in *Report of the Royal Commission on the Laws of Marriage* or Collins's summary in his novel, the condition to fulfill an irregular marriage is simply an announcement, a gesture of claiming oneself married to someone publicly or privately. From Collins's perspective, the dispensability of formality and sociality results in the "looseness" of marriage law in Scotland (*Man* 190). Arguably, instead of looseness, the dispensability of formality and sociality actually constitutes the strictest surveillance of the contracting act of getting married.

While the culturally approved rituals and procedures of formality and sociality may typically serve as the official and public surveillance over the marrying act, their renunciation does not necessarily undermine surveillance but, on the contrary, may reinforce surveillance: a regular marriage is supervised and validated only by religious or government officers, but the power to validate an irregular marriage is distributed to every member of the society.<sup>5</sup> Regardless of whether a person is aware or willing, any member of the society may automatically become a witness empowered to validate a marriage as long as someone makes a marital announcement in front of them. The distribution of validating power manifests in why the interchange of consent on a secret and private occasion is still recognized as a legal irregular marriage: the two parties who interchange their consent perform the witnessing for themselves and for each other. Under the circumstances, all empowered members constitute a renovated type of public, comprised not only of witnesses but also of supervisors. Notably, the empowered public does not replace the legal authority at all. As Lindsay Farmer comments, the "autonomy" of Scottish law "has been preserved through the belief in the continuity and timelessness of legal concepts and more particularly in the reverence for authority" (184). Based on the belief in "the continuity and timelessness of legal concepts," Scotland abolished irregular marriage much later than did other places. Holding "the reverence for authority," the empowered public complements regular marriage with irregular marriage under the overall surveillance conducted by all members. Every validated irregular marriage is a practice granted by the

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<sup>5</sup> The argument that Scotch marriage functions as a strict supervision/surveillance brings out the idea of the power distribution of validating a marriage, which also appears in my dissertation (Lan 164). Nonetheless, the purposes of raising such an argument are different. Here the argument is associated more with the empowered public (as will be contended in the following) to elaborate the publicness of a Scottish judgment; in contrast, it is unfolded through Giorgio Agamben's conception of *auctoritas* and the dynamic between exception and norm in my dissertation (165-66).

legal authority, and the repeated practices in the society consolidate the authority that grants the validating power to every member. In such a relationship between the public and the law, every member is a supervisor as a part of the empowered public and, at the same time, an individual to be supervised.

The surveillance can be observed through Anne's plan to realize an irregular marriage *per verba de praesenti*. After making the appointment with Anne, Delamayn receives the news about his father's illness and needs to return to London, so he asks his friend Arnold Brinkworth to bring a message to Anne at the inn. To avoid the risk of creating a scandal, Brinkworth takes over Delamayn's role, saying he comes to join his wife there (Collins, *Man* 124). Brinkworth's presentation of himself as Anne's husband exemplifies how the overall surveillance of the marriage contract becomes a trap, the metaphor with which Collins tries to impress his readers. According to the lawyer Sir Patrick Lundie, if the "invisible" man with Anne at the inn pretends or attempts to pretend to marry Anne, "the chances are nine to one (though *he* may not believe it, and though *she* may not believe it) that he has really married her" (199). Overhearing Blanche's retelling of Sir Patrick Lundie's comment, Delamayn figures out that he can take advantage of what Brinkworth does at the inn, so later he declares to Anne, "[y]ou're married already to Arnold Brinkworth" (252).

In contrast with the daily practice of validating irregular marriage, the dispute about the irregular marriage between Anne and Brinkworth is to be resolved in a quasi-courtroom, i.e., in an inquiry held in a private mansion to clarify Anne's marital status and her spouse. Although it is a private inquiry, the "directly involved parties—except Anne, who cannot afford a lawyer and whose interest coincides with Brinkworth's—have their own lawyers present in the inquiry": a Scotchman, Mr. Moy, for Delamayn; an English lawyer, on behalf of Lady Lundie and Blanche; Sir Patrick Lundie, for Brinkworth (Lan 171). The private mansion is turned into a court where the lawyers offer their professional perspectives and try to defend their clients' benefits. As Moy describes, "this informal inquiry" is "a means, if possible, of avoiding the painful publicity which would result from appealing to a Court of Law" (Collins, *Man* 507). The inquiry is an alternative to official litigation to keep this marital dispute off the legal record and the public gossip, but the argument

and conclusion made between the lawyers supply it with a degree of juridical credibility.

Sir Patrick Lundie needs to disprove the irregular marriage between Anne and Brinkworth. To prepare a strong argument, Lundie recovers the previous correspondence between Delamayn and Anne, which is brought by Brinkworth to the inn and picked up by the head waiter there. The correspondence includes Anne's message to Delamayn, with the closing, "your loving wife," and Delamayn's response, with the closing, "[y]our loving husband" (Collins, *Man* 481-82).<sup>6</sup> As exemplified by the factual case of Dalrymple recorded in *Report of the Royal Commission*, the correspondence between Anne and Delamayn can be regarded as evidence of another form to express one's consent:

. . . writings, secretly exchanged between a gentleman and lady in Scotland, without the knowledge of any other person, were held by the English Court Matrimonial to have constituted a valid marriage, so as to annul and render bigamous a marriage celebrated four years afterwards *in facie ecclesiae* between the same gentleman and another lady in England, although the parties had kept the nature of their relation to each other, as expressed in those writings, from the knowledge of their families and the world, and had never lived together as husband and wife. (*Report* xviii)

The Dalrymple case is definitely in Collins's knowledge, for Sir Patrick Lundie's mention of it (Collins, *Man* 522), and it stands for a factual precedent to be referred to in the fictional dispute over Anne's legal spouse.<sup>7</sup> After

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<sup>6</sup> Sir Patrick Lundie's effort to prepare for the inquiry, as part of the plot summary, is described similarly in my dissertation with some wording differences (Lan 172).

<sup>7</sup> According to the specific content of the correspondence, it seems arguable whether the intention to keep a promise to get married and the closings as husband and wife would be sufficient in proving an exchange of consent. In the later discussion between Sir Patrick Lundie and Mr. Moy (the lawyer on behalf of Delamayn), Lundie simply sums up the principle set by the case of Dalrymple: "A written promise of marriage exchanged between a man and woman, in Scotland, marries that man and woman by Scotch law" (Collins, *Man* 523). In the report of the judgment, however, there are three papers dated differently that convey, respectively, a promise, a "*declaration* and *acknowledge* of a marriage" made by the female party, and "*a renewed declaration* of marriage" made by the male party (Dodson 2). While the factual precedent is not as simple as Lundie sums up, the written promise may be applied to

confirming the actual situation with Anne, Lundie tells her “[o]n the day, and at the hour, when he wrote those lines at the back of your letter to him, you were Geoffrey Delamayn’s wedded wife!” (483). Then he sees Anne’s “horror-stricken face” and realizes “the dreadful sacrifice” of being the wife of a “villain,” “traitor,” and “ruffian” like Delamayn (483).

In this situation, Sir Patrick Lundie encounters a dilemma between Anne’s welfare and Blanche’s marital legitimacy. The dispute over Anne’s legal spouse implicates the well-being of three women: Anne herself, Blanche Lundie, and Mrs. Glenarm. At the moment of the inquiry taking place, Anne feels “no love” for Delamayn and “no latent jealousy” toward Mrs. Glenarm (Collins, *Man* 426-27). With no intention to be Delamayn’s wife at that time, Anne insists on Delamayn withdrawing his assertion of her marriage with Brinkworth only because this damages Blanche’s marital legitimacy. Gradually growing sympathetic toward Anne, Lundie attempts not to expose Anne’s marriage with Delamayn if possible and, thus, temporarily saves his strongest argument with the evidence of the recovered correspondence in the inquiry.<sup>8</sup> Concerned with protecting Anne at the same time, Lundie contends at first that Brinkworth and Anne did not really exchange their consent to get married when they met at the Craig Fernie inn. After Lundie has Brinkworth and Anne respectively assert that they do not have even the slightest intention to get married at all, Moy

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the other type of irregular marriage in *Report of the Royal Commission*: irregular marriages *subsequente copulâ*, namely, by promise. Although a mere promise of future marriage or carnal intercourse itself is not sufficient to be a legal marriage in Scotland, as in England or Ireland, the *Report* reveals that “to mere carnal intercourse, if preceded by a *written* promise of future marriage, or by a promise, *afterwards confessed upon oath*, the effect of marriage is practically given” (xix). The correspondence doubtlessly proves a promise of future marriage. However, it is never clarified whether Delamayn’s promise is legally upon oath, and an investigation as to whether Delamayn gave his promise before or after his sexual intercourse with Anne would be too morally transgressive for Victorian readers of a novel serialized in newspapers or popular magazines. For instance, the scene in which Miserrimus Dexter kisses Valeria’s hand and winds his arm around Valeria’s waist in *The Law and the Lady* was originally deleted to give “no offence to the family circle” when it was published in the *Graphic* (Collins, *Law* 299, 416, 427). Under such moral censorship in the Victorian age, appealing to irregular marriages *subsequente copulâ* would have been likely to distract readers from Collins’s intent to draw public attention to the defects of irregular marriage in Scotland. To sum up his efforts in demonstrating a final verification of the marriage between Delamayn and Anne, Collins collects the elements of consent to a private marriage by promise and takes letters as sufficient evidence of an irregular marriage.

The critical value of the Dalrymple case and the further clarification above are so indispensable that they can also be found in my dissertation, with some wording differences (Lan 172-73).

<sup>8</sup> The following of this paragraph is the plot summary of Sir Patrick Lundie’s growing sympathy toward Anne and the intertwined relationship among Anne, Delamayn, Blanche, and Brinkworth. Hence, the description is similar to the summary in my dissertation with some wording differences (Lan 174-75).

reminds Lundie and the present company that “all that we have just heard is mere assertion” and foretells that he will prove the marriage denied by Brinkworth and Anne “by appeal to competent witnesses” (510-12). Blanche, though inclining to trust Brinkworth and Anne, says, “I cannot go back to him [Brinkworth], until I am first *certain* that I am his wife” (514). Unable to achieve the consensus between the present parties via sincere assertion, Lundie confers with Anne in private and finally renders evidence of the correspondence (518-23).

In his preface, if Wilkie Collins intends to uncover the defectiveness of the irregular Scotch marriage to justify his call for reform, Lundie’s defending strategies discernibly stray from the novelist’s purpose. Instead of relying on some English formality to resolve the dispute caused by irregular marriage, Lundie’s first strategy is to employ the methodology sanctioned by the irregular Scotch marriage: verbal assertion.<sup>9</sup> It is the Scottish lawyer Moy who rejects the credibility of the methodology. Moy’s rejection compels Lundie to forsake the purely Scottish methodology and turn to his second strategy: appealing to a Scottish precedent sanctioned by the English authority. The judgment of this case was “confirmed by the supreme authority of the House of Lords” (Collins, *Man* 523). As Ayelet Ben-Yishai points out through Anthony Trollope’s *Eustace Diamonds*, “[p]recedent depends on a commonality, in its incremental shifts and changes, to secure its authority” (117). In *Man and Wife*, the Dalrymple case stands for not only an instance of irregular marriage as defined in the *Report of the Royal Commission*, but also a referable legal precedent acknowledged in both Scottish and English law. As can be observed, Lundie’s two strategies do not prove any shortcoming of Scottish law; instead, they follow Scottish methodology and Scottish precedent.

Evidently, Lundie’s defending strategies do not tally with his impassioned criticism of the Scottish marriage law. Therefore, his performance in this private inquiry eventually reveals that the interpersonal strife depicted in *Man and Wife* is not caused by the irregular Scotch marriage but by the human decision to betray a marital contract. After the dispute about Anne’s spouse is settled, Mr. Moy expresses his perspective and offers another interpretation of

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<sup>9</sup> Sir Patrick Lundie’s Scottish-inclined strategy is also included in my dissertation, but his mediator character between England and Scotland is much more emphasized there (Lan 175-76). In this essay, only the Scottish idiosyncrasy of his defense strategy is highlighted to concentrate on the publicness of Scottish law.

irregular marriage. Holding “the highest opinion” of the Scottish marriage law, Moy believes “[a] man who has betrayed a woman under a promise of marriage, is forced by that law (in the interests of public morality) to acknowledge her as his wife” (Collins, *Man* 523).<sup>10</sup> Moy’s opinion precisely corresponds to Anne’s hope at the beginning of the story when she tries to create the legal fact of being married to Delamayn to save her reputation. The inquiry’s conclusion actually proves Anne’s triumph over Delamayn’s selfish betrayal, while she could not perceive the legal effect of Delamayn’s written message during her anxious wait at the inn. Although Delamayn makes a consenting gesture without consenting intent, the Scottish marriage law executes its strictest surveillance of all consenting gestures and disallows any mock performance of getting married. Likewise, the Scottish marriage law supervises Brinkworth’s reckless addressing of Anne as his wife at the inn, but this irregular marriage is not validated just because Anne has been married to Delamayn when Delamayn writes the closing, “[y]our loving husband,” on the letter.

Moy’s opinion represents an optimistic expectation of the overall surveillance of irregular marriage; further, Lundie’s response, seeming like an argument against Moy’s optimism, exposes irregular marriage as a scapegoat for Anne’s suffering. Responding to Moy’s opinion of irregular marriage, Lundie declares, “[t]he persons here present, Mr Moy, are now about to see the moral merit of the Scotch law of marriage (as approved by England) practically in operation before their own eye”: the marriage law “first forces a deserted woman back on the villain who has betrayed her, and then virtuously leaves her to bear the consequences” (Collins, *Man* 523). Apparently, Lundie ascribes Anne’s imminent peril of leaving with her outrageous husband to the irregular Scotch marriage. Nevertheless, Anne’s jeopardy “actualizes not the worst possibility of a Scotch marriage but the worst of human marriage. Be the marriage [a] Scotch marriage or [an] English one, an abusive husband has plenty of chance to mistreat his wife in their private [home]” (Lan 178-79).

In fact, irregular marriage postpones Anne’s misery of staying with Delamayn until the private inquiry takes place.<sup>11</sup> Without being perceived, the

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<sup>10</sup> Mr. Moy’s opinion, to a great extent, represents the ideal presupposition about a law like Scotch marriage, so the textual analysis of Moy’s statement also appears in my dissertation with some wording differences (Lan 177).

<sup>11</sup> The argument that irregular marriage postpones Anne’s danger has been proposed in my dissertation; nevertheless, it aims to expose the disassociation between truth and justice there (Lan 179), rather than leading to a new possible form of justice in this essay.

Scottish marriage law executes its surveillance privately and silently. According to Anne's quarrel with Delamayn at the beginning of the main story, their irregular marriage serves his interest to keep this affair in private and her interest to get married, while their wishes would contradict each other in a formal English marriage. The Scotch marriage between Anne and Delamayn is, in brief, a legal marriage with neither the regular validation of a marriage nor the regular form of marriage life. Unsurprisingly, the story of a marriage dispute ends up with a harmonious marriage—not between Anne and Delamayn but between Anne and Sir Patrick Lundie. A harmonious marriage is a conventional way to do a heroine justice at the end of a novel; however, in a novel revolving around a questionable marriage, such an ending suggests a new possibility of justice in a legal marriage.

## II. The Scotch Verdict “Not Proven” in *The Law and the Lady*

In contrast to the story in *Man and Wife* that highlights the Scotch marriage throughout the novel, the Scotch verdict “Not Proven” in *The Law and the Lady* is a hidden gate to be found to figure out a mystery in the past. *The Law and the Lady* begins with an ominous wedding: the heroine Valeria Brinton mistakenly signs her married name when she should sign her maiden name in the marriage register; just several days later, her husband Eustace's family name Woodville is discovered to be a pseudonym (Collins, *Law* 8, 40).<sup>12</sup> Valeria finds the reason for Eustace's deceit in an issue of *Trials*, a publication of actual proceedings, where she encounters “A Complete Report of the Trial of Eustace Macallan for the Alleged Poisoning of His Wife” (93-94, 421). The Scotch verdict “Not Proven,” which Eustace finally received in that trial, is “a form of compromise” for the jury to express “there is not evidence enough, on the one hand, to justify them in finding a prisoner guilty, and not evidence enough, on the other hand, to thoroughly convince them that a prisoner is innocent” (101).

Eustace's decision to use a pseudonym precisely reflects his psychological and social dilemma due to the Scotch verdict. Legally speaking, the Scotch verdict means that one is not guilty of the specific crime charged; socially speaking, however, it shows that one is not innocent beyond all doubt from the

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<sup>12</sup> This paragraph is part of the story necessary to assess the Scotch verdict “Not Proven” in *The Law and the Lady*, so it is similar to the plot summary in my dissertation with some wording differences (Lan 180).

jury's perspective at the end of a trial. Consequently, the defendant is left in a permanent gray zone of legally not guilty and socially not innocent.<sup>13</sup> Use of a pseudonym is Eustace's tactic to avoid the suspicion associated with his murder trial that concluded with the verdict "Not Proven." As can be observed, Eustace has accustomed himself to covering his social torment with a pseudonym, but the new victim, Valeria, a woman who knows nothing about her husband's secret until detecting her mother-in-law's "incomprehensible apathy," decides not to endure the perpetual dilemma (Collins, *Law* 30). The whole novel is Valeria's quest for the truth about Eustace's cheating and about his first wife's death. As critics Anne Longmuir, Mary M. Husemann, and Teresa Huffman Traver argue, Valeria's fight to subvert the Scotch verdict indicates the struggle between Scottishness and Englishness in a framework of imperial discourse (Longmuir 174, 176; Husemann 73-75; Traver 70-73). In Karin Jacobson's interpretation, "Not Proven" signifies the "queerness/weirdness" of the case, and Valeria's attempts represent the endeavor "to mediate the excess and control the passion that constitutes the 'weirdness'" (284-85). To sum up, Valeria's striving is a drive to eliminate the gray zone created by the Scotch verdict so that she can present her husband's integrity with English-styled clarity.<sup>14</sup>

If a man's moral or social integrity must be maintained in a clarified representation of one's life story, an inclination to conceal the truth is ironically disclosed through Eustace's suspicious actions, as recorded in the report in *Trials*. In the procurator fiscal's testimony, Eustace took a legally disadvantaged action of not cooperating with the police when they went to search Eustace's house.<sup>15</sup> When the advocate deputy came, Eustace was ill in bed and refused to answer the advocate deputy's questions that simply aimed to determine whether any items in his house were moved after the death of his

<sup>13</sup> The term "gray zone" also appears in my dissertation, associated with Agambenian suspension (Lan 184). In this essay, however, it is not necessarily Agambenian suspension, but a chaotic area that intermingles binary oppositions and invites heteroglossic judgments.

<sup>14</sup> In addition to the signification in the discourse about imperialism, Valeria's journey to find out the truth is also interpreted based on the detective style of *The Law and the Lady*. Many criticisms point out the female agency via Valeria's leading role in the reinvestigation into Eustace's case. Please see Heller 167; Johnston 38-50; Meyler 159-60; and Miller 47.

<sup>15</sup> This paragraph mainly illustrates Eustace's suspicious actions during the police investigation and the trial to support the ensuing argument of his moral/emotional guilt in his relationship with his late wife. Hence, this paragraph is very similar to the plot summary in my dissertation with some wording differences (Lan 182).



wife Sara (Collins, *Law* 144). After precluding the obstruction performed by Miserrimus Dexter, the advocate deputy wanted to examine a locked drawer of the bedside table, but Eustace refused to hand over the key (145). Later, when Eustace listened to the testimonies given by Sara's relatives and friends in the court, he emotionally broke down (156). The testimonies elucidated how Eustace desperately yet generously married Sara to save her reputation when he had lost the woman he truly loved at that time (153-56). Listening to the testimonies, Eustace "protested against the contemplated violation of his own most sacred secrets and his wife's most sacred secrets" in "piercing tones" (156). He even exclaimed "[h]ang me, innocent as I am," striving to "spare" himself from the mental torture of listening to his family's privacy being exposed in public (156). His refusal to cooperate with the police investigators and his fierce reaction in the court drove him to fall under suspicion as if he were hiding something or tortured by a sense of guilt.

Nevertheless, as Eustace's legal innocence was ultimately verified, his behaviors during the investigation and the trial has nothing to do with concealing a crime; he was motivated instead by his sincere resistance against any attempt to publicize his private domestic affairs under the Matrimonial Causes Act of 1857. "With his gentlemanly dignity, Eustace claimed his right to protect his own privacy when he believed" himself to be an innocent citizen (Lan 183). As with Tamara S. Wagner's study about the "sensational epistolarity and violence" throughout *Man and Wife*, *The Law and the Lady* exemplifies a similar violent violation of privacy (25-26, 36-49). As is typical of the Victorian genres of sensation journalism and sensation or crime fiction such as the Newgate novels, in Collins's *Man and Wife* and *The Law and the Lady*, the fascinating, shocking and scandalous violence associated with legally sanctioned probes into private letters and domestic life is represented as being substantially legitimated by the society's pursuit of truth and justice. In short, violence is the means to preserve the authority of the juridical institution by displaying legal violence upon people. Once a charge is raised, the legal application of violence is justified regardless of the final judgment.

What is intolerable may be that Scottish law reached a verdict of "Not Proven" after exerting legal violence: "Rather than rendering the truth at the price of violating [individual] privacy, the law gave a verdict with no truth found" (Lan 183). The judge in the poisoning charge reminded the jury that they must accept the fact of having no direct evidence because such "evidence

hardly ever occurred in cases of poisoning” (Collins, *Law* 181).<sup>16</sup> The judge told them “[y]ou must have evidence satisfactory and convincing to your own mind” to “find no conjectures—but only irresistible and just inferences” (181). As a result, the jury decided to give the Scotch verdict “Not Proven” under the circumstances of all the evidence against Eustace but with no direct evidence found. In a sense, the Scotch verdict is a conditioned acquittal to leave the charged morally suspect under the jury’s conclusion: “We don’t say you are innocent of the crime charged against you; we only say, there is not evidence enough to convict you” (182).

Moral suspicion is the ultimate punishment for the charged who receives the Scotch verdict. Valeria, an affectionate wife who is partial toward Eustace, accuses the verdict of being “timid and trimming,” “lame and impotent” (Collins, *Law* 182). The verdict, however, actually asks the same questions raised by Valeria herself: “Who is to decide what is a just inference? And what does circumstantial evidence rest on, *but* conjecture?” (181). The Scotch verdict denotes a consciousness of the problematic justifiability of a legal judgment, thus showing the supreme prudence in making such judgment. The Scotch verdict does not presume a judgment will be spontaneously justified at the moment of being given; instead, it preserves the justifiability of a judgment by giving every member the same right as the jury (Lan 184). Since the official judgment does not announce guilty or not guilty, every individual makes his/her own judgment concerning the guilt or innocence of the accused. “Not Proven” incites a public judgment comprised of heterogeneous opinions when some think the charged innocent, some think guilty, and some reserve their ideas. Therefore, the Scotch verdict is justifiable for it contains potentialities of a judgment in the heterogeneous opinions. The genuine cause of Eustace’s suffering, arguably, is not the uncertainty of “Not Proven” but the ceaseless heterogeneous judgment. That is, Eustace is being constantly judged by everyone who knows the verdict.

Valeria’s reinvestigation is also a practice of making an individual judgment. While the Scotch verdict invites her to judge, Valeria does not forsake the Victorian feminine virtues but uses her feminine beauty and sensitivity to facilitate her reinvestigation. As critics have pointed out, Valeria

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<sup>16</sup> The following part is the textual evidence of how Eustace eventually got a Scotch verdict, so it is similar to the related passage in my dissertation with some wording differences (Lan 183-84).

performs a woman's duty to look beautiful, even with the degraded assistance of cosmetics, to gather the necessary information from Major Fitz-David; further, regarding the investigation method, she is "not bound by the limitations of the law" and "reverses the lawyers' method from deduction into induction" (Briefel 463-64, 467; Reed 222; Sparks 50-51). In brief, Valeria's femaleness complements the first male-dominated and rational-oriented investigation. As the lawyer Mr. Playmore acknowledges, "[t]he light which the whole machinery of the Law was unable to throw on the poisoning case at Gleninch, has been accidentally let in on it, by a Lady who refuses to listen to reason and who insists on having her own way" (Collins, *Law* 277). Valeria's wifely jealousy leads her to wrongfully doubt Helena Beauly, but her instinct accurately keeps her consulting with Miserrimus Dexter, the man who secretly holds the key to the truth about Sara's death.

More than knowing, Dexter withheld the evidence to satisfy his conscience and sadism at the same time when he saw his love rival Eustace being accused of murder.<sup>17</sup> According to Playmore's reconstruction of the entire story about Sara's death, the motive of Dexter's attempt to block the police from Eustace's locked drawer should be conscience: Dexter read Eustace's diary using a copied key and knew that the diary would make Eustace look like a murderer. Dexter's last words "[t]he Diary will hang him; I won't have him hanged" verify that he was incapable of "permitting the friend who trusted him to be tried for murder, through his fault, without making an effort to save the innocent man," though the friend was also "his successful rival in the affections of the woman whom he loved" (Collins, *Law* 401-02). After Dexter failed to stop the police from getting the diary, he kept Sara's farewell letter, which would show her death a suicide, and did not destroy it until the Scotch verdict was announced (402). Playmore believes Dexter "would not have hesitated to save the innocent husband by producing the wife's confession" if the verdict "had been Guilty" (402). In short, Dexter held the evidence to prove Eustace's legal innocence, but, as long as Eustace's life would not be wrongfully taken, Dexter would have wished to see Eustace tormented by the law for Sara's death. Owing to his

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<sup>17</sup> Dexter's ambivalence toward Eustace suffering from the murder charge has also been pointed out in my dissertation (Lan 192-93). The supporting textual evidence is the same as that in my dissertation, given some different wording, but the ensuing argument in this essay no longer emphasizes Dexter's alliance with Scottish law.

concealment of some crucial evidence, the murder charge ultimately resulted in a Scotch verdict.

The Scotch verdict and Dexter's inner paradox problematize the concepts of innocence and justice in the law: how innocent should one be to be regarded as not guilty in the law? How innocent should one be to deserve justice without any qualm from conscience? Valeria always believes in Eustace's innocence in Sara's death, but, after the whole story is finally reconstructed, she seals up Sara's farewell letter and leaves it in the hands of her newborn son. She tells Eustace that she does so "out of compassionate regard for his own peace of mind as well as for the memory of the unhappy woman who was once his wife," but if "he so wills it," the letter may become the means of "publicly vindicating his innocence in a Court of Law" (Collins, *Law* 410). While Eustace feels he should "be acting mercifully and tenderly towards the memory" about his late wife through reading her innermost suffering, he does not have enough courage to take the letter from his son's innocent hands (412-13). By Valeria's effort, Eustace can leave the gray zone of the Scotch verdict; however, by contrast with their newborn son's innocence, Eustace's innocence to be proven is not innocent enough to utterly exempt him from his first wife's death. The sealed letter subverts Valeria's naïve belief that justice will be spontaneously fulfilled by uncovering the truth before the public. For Valeria and Eustace, justice, i.e., the possibility for them to live a happy life after the incident of Sara's death, is built on the concealment of the truth, which is actually the original state maintained by the Scotch verdict.

### III. Private Justice in Compassion/Affection

Despite Sir Patrick Lundie's and Valeria's impassioned criticism of Scottish law, this law is not the real cause of human suffering depicted in the novels.<sup>18</sup> The irregular Scotch marriage in *Man and Wife* fulfills all Anne and Delamayn demand: as soon as they consent to marriage, they are married by the appellation in correspondence; they want a private marriage, so their married status remains unknown to anyone until an inquiry is held to clarify the legal validity of the other two marriages. In *The Law and the Lady*, the Scotch verdict

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<sup>18</sup> This paragraph summarizes the influences of Scottish law on the main characters in the two novels. Hence, with some wording differences, this paragraph is similar to the summary intended to bring out the chapter conclusion in my dissertation (Lan 195-96).

“Not Proven” serves as the most proper judgment, for Eustace is neither guilty nor innocent in Sara’s death. As Aoife Leahy points out, “the working out of the plot seems to indicate the verdict was the fairest one at the time, in the face of conflicting evidence” during the trial (152). In fact, the verdict “Not Proven” is still the fairest judgment for Eustace after Valeria retrieves Sara’s farewell letter. Sara was portrayed as a not pretty, suspicious, ill-tempered and overly possessive wife in the testimonies, but the excerpt of Eustace’s dairy presented in the court proved that Sara’s jealousy was not unfounded since Eustace indeed kept a strong attachment to Helena Beaulieu (Collins, *Law* 129-31, 157-65). The Scotch verdict implicates the husband’s affectional betrayal: Eustace is not guilty in poisoning Sara, nor is he innocent in arousing her suicidal despair. To the greatest extent, Scottish law responds to human demand—for a private form of marriage or for a fair penalty—in these complicated interpersonal relationships. The predicaments in the novels are, in a word, suffering from these relationships.

Remarkably, Anne’s irregular marriage with Delamayn and Eustace’s Scotch verdict remain unaltered at the end of both novels. Before and after Sir Patrick Lundie’s defense in the inquiry, Anne remains Delamayn’s legal wife. Before and after Valeria’s quest to the truth, moreover, Eustace is not utterly exempted from Sara’s death. The crucial difference brought out by the protagonists’ effort is human understanding of the given legal judgments. No one knew or believed the validity of Anne’s irregular marriage with Delamayn without Lundie’s verification, and Valeria would not have thought the Scotch verdict should remain for Eustace if she had not reinvestigated Sara’s death. The truth justifies the legal judgment in both novels, but it does not mean the novels turn out to demonstrate an impartial righteous law in Scotland. Rather, the novels illuminate a legal gray zone that allows for a variety of individual perspectives. The public under Scottish law is empowered to give its judgment—not for the accomplishment of a democratic consensus but for the preservation of heterogeneous opinions. The Scottish and the heterogeneous public support the social legitimacy of each other inter-referentially: the law allows every member of the society to validate an irregular marriage or make his/her own judgment about a case of “Not Proven,” and every practice of

witnessing an irregular marriage or interpreting a case of “Not Proven” realizes and thus consolidates the authority of the law to admit these practices.<sup>19</sup>

Both irregular marriage and “Not Proven” serve the purpose of inviting individual participation in consolidating the juridical authority; however, they renovate the conception of giving a legal judgment in different ways. The legal formality renounced in irregular marriage is the procedure of verifying a judgment’s validity. Announcing getting married or witnessing people getting married becomes an instant judgment, not requiring extra proof or procedure. In contrast, “Not Proven” denotes a verdict whose substantial consequences are to be actualized in the charged’s ensuing social life. “Not Proven” is a judgment by which the law withdraws from definitive determination of guilt and stipulation of penalty. It is a judgment that permits more judgments to be made, i.e., a judgment given not at the end but at the beginning of judging. To sum up, irregular marriage recognizes the instant judgment without any delay of assessing the marrying parties’ relationship, and the Scotch verdict is a judgment that invites more judgments.

As a legal judgment under the particular circumstances of Scottish law depends on heterogeneous public judgment that consists in individual participation, justice is not to be found in a judgment based on an overall assessment or a finalized conclusion but in a more molecular scope: compassion/affection in a private intimate relationship. At first sight, Anne’s remarriage with Lundie and Valeria’s reunion with Eustace look like the conventional happy ending for suffering women in literature. What makes their marriage more than a convenient shortcut is accepting a spouse’s infamy. The acceptance in a private relationship at the end is not a reward for a good person who honestly goes through undeserved suffering but a kind of unconditional acceptance on the ground of knowing the truth. Lundie decides to marry Anne when he knows she is a deserted wife involved in a scandalous marriage dispute, and Valeria accepts Eustace even though she learns her husband had emotionally abused his first wife. No matter whether Anne or Eustace should

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<sup>19</sup> The inter-referential relationship between the legal permission of individual participation and every practice of making a judgment passively or actively represents the same kind of relationship between exception and norm in Agamben’s theory (Lan 165-66). Nonetheless, in my dissertation, the dynamic between exception and norm aims to manifest the constituting and constituted powers of the law, but in this essay, the relationship between the legal permission and individual practice helps demonstrate the particular publicness and heteroglossia of judgments admitted by Scottish law.

be fully responsible for their infamy, Lundie and Valeria accept their spouses' history, instead of giving a punitive judgment.

The exclusive nature of private justice can be observed in Lady Lundie in *Man and Wife* or readers addressed by Valeria in *The Law and the Lady*. Lady Lundie, Blanche's mother and Sir Patrick Lundie's sister-in-law, is a mediocre woman who obeys the conventional conduct codes. Throughout the novel, she persists in her dislike of Anne, a young beautiful governess. When Lady Lundie sees Sir Patrick Lundie's newly wed wife, the all-capital form "ANNE SILVESTER" expresses her astonishment (Collins, *Man* 642). For the sake of poetic justice, it is predictable that Anne will be rescued from Delamayn's murderous rage; it is a surprise, then, that Sir Patrick Lundie, a gentleman from the older generation, will give up his bachelor life and marry Anne. Lady Lundie's astonishment represents the general discrimination against Anne after her marriage with Delamayn according to the high moral demand of women in the Victorian age. Likewise, the assumed readers addressed by Valeria, a female detective who is aware of reporting her reinvestigation, stand for moral censorship of marriage and a wife's suspicious death. In the end, Valeria begs readers "[d]on't bear hardly, good people, on the follies and the errors of my husband's life. Abuse *me* as much as you please. But pray think kindly of Eustace, for my sake" (Collins, *Law* 413). Her begging reveals that she knows not everyone will spontaneously show kindness toward a man like Eustace. In these narratives, Scottish law empowers the public to actualize or execute a legal judgment, but justice is not to be sought in the law or the public. Despite Collins's zealous call for reforms of Scottish law, his literary representations of irregular Scotch marriage and the Scotch verdict "Not Proven" actually open up and reimagine the relationship between the law and human life.

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