

“IF LAW ITSELF HAD CONSCIOUSNESS”

LEGAL ENTANGLEMENTS

IN HARDY’S PROSE

THESIS

Presented to the Graduate Council  
of Texas State University—San Marcos  
in Partial Fulfillment  
of the Requirements

for the Degree

Master of ARTS

by

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San Marcos, Texas  
May 2004

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## DEDICATION

*To my students, for your encouragement and support*

## ACKNOWLEDGEMENTS

This work represents the culmination of a quest I began several years ago, and many people have helped me accomplish my tasks, allowing me to continue, to finish my journey. I can never fully repay them for all their help, so I offer these words as an acknowledgement of the role each has played in helping me to accomplish my goals, to succeed in my quest.

I would like to begin by thanking God for the many gifts He has bestowed upon me; without His help and support I cannot accomplish anything. In His infinite love and wisdom, He gave me my wonderful parents, Betty Marie and John Thomas Donahue, both of whom instilled in me my love of learning and my desire to challenge myself to realize my potential. They have been the guiding lights throughout my life, and though they are no longer with me, I retain their words of wisdom and love.

I have been blessed with two dear friends in my life who are as close to me as sisters ever could be: Katrina Rodriguez and Sue Johannessen. The two of you listened to my writer's block frustration during the dark days when I thought this work might never be finished, and you cheered loudly at the arrival of the eventual breakthroughs. Your love, support, and encouragement sustained me and helped me survive. I can only say "thank you." Two other friends also



helped me achieve this goal, and I offer you my thanks as well—Nancy Ramos and Dallas Grodman. The two of you helped me remove obstacles from my path that I thought would prevent the completion of my degree. Four truer friends an individual could never have.

To my friends and colleagues at Samuel Clemens High School, thank you for your encouragement and support as I labored to complete this work.

I gratefully acknowledge the use of two pages from Lennart Bjork's *The Literary Notebooks of Thomas Hardy*, Volume 1, 1985, Macmillan, reproduced with the permission of Palgrave Macmillan. The inclusion of these pages provides additional clarification for my analysis of Hardy's concept of moral reasoning.

To the entire staff of Alkek Library I offer my thanks—thanks for extending due dates on materials, for adding texts to the collection at my request and for locating and obtaining materials for me both inside and outside of the collection. While all these acts fall within the scope of your duties, each person with whom I worked always took a personal interest in trying to help me obtain the materials I needed to complete this project.

Finally, I extend my heartfelt gratitude to my graduate advisor Dr. Paul Cohen, the English Department Graduate Faculty, and to the members of my thesis committee—Dr. Martha L. Brunson, Dr. Kathryn Ledbetter, and Dr. Daniel Lochman. To Dr. Cohen and the English Department Graduate Faculty, thank you for the encouragement and support you all have shown me. You helped me find the answers I needed and provided me with challenging classes in which to

stretch my skills. To Dr. Ledbetter and Dr. Lochman, thank you for serving on my committee and for being as gracious and understanding as possible when I needed it most. To Dr. Brunson, thank you for reintroducing me to Thomas Hardy and his works; your class allowed me to find the spark that ultimately resulted in this work. Beyond that simple phrase of gratitude, any words I write will be insufficient to express my thanks for all the encouragement, support, wisdom, guidance, and love that you showed me as I struggled to complete this thesis. Thank you for understanding the problems facing a full-time high school English teacher trying to write a thesis—interceding for me as deadlines approached, helping redirect my focus when all seemed lost, and providing firm, yet gentle nudges in the back when I needed them most. You have been my guiding angel, and without your friendship and loving guidance as I wandered through the legal morass in Hardy’s prose, my task would have been so much more difficult.

This manuscript was submitted on May 3, 2004.

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Both pages from Lennart Bjork's *The Literary Notebooks of Thomas Hardy*, Volume 1, 1985, Macmillan, reproduced with permission of Palgrave Macmillan.

## LIST OF ABBREVIATIONS

Works by Hardy cited in the text use the following abbreviations:

- CL*            *The Collected Letters of Thomas Hardy*. Ed. Richard Little Purdy and Michael Millgate. 7 vols. Oxford: Clarendon P, 1978-88.
- DR*            *Desperate Remedies*. Ed. Mary Rimmer. New York: Penguin, 1998.
- FMC*          *Far From the Madding Crowd*. Ed. Robert C. Schweik. New York: W. W. Norton, 1986.
- J*              *Jude the Obscure*. Ed. Norman Page. New York: Norton, 1999.
- Life*          *The Life and Work of Thomas Hardy*. Ed. Michael Millgate. Athens: U of GA P, 1985.
- LLI*          *Life's Little Ironies*. New York, Harper, 1894.
- LN*            *The Literary Notebooks of Thomas Hardy*. Ed. Lennart A. Bjork. 2 vols. London: Macmillan, 1985.
- LN3*          "Literary Notes III: Facts from Newspapers, Histories, Biographies, other Chronicles (mainly Local)." *The Original Manuscripts and Papers of Thomas Hardy*. East Ardsley, Yorkshire: EP Microform, 1975. Reel 9.

- MC*      *The Mayor of Casterbridge*. Ed. James K. Robinson. Ed. James K. Robinson. New York: Norton, 1977.
- PBE*      *A Pair of Blue Eyes*. Ed. Pamela Dalziel. New York: Penguin, 1998.
- PW*      *Thomas Hardy's Personal Writings*. Ed. Harold Orel. Lawrence: U of KS P, 1996.
- T*      *Tess of the d'Urbervilles*. Ed. John Paul Riquelme. New York: Bedford/St. Martin's, 1998.
- W*      *The Woodlanders*. Ed. Patricia Ingham. New York: Penguin, 1998.
- WT*      *Wessex Tales*. Ed. Kathryn R. King. New York: Oxford U P, 1992.

## CHAPTER ONE

### JURY SELECTION:

#### QUESTIONING HARDY'S MOTIVES<sup>1</sup>

*If Law itself had consciousness, how the aspect of its creatures would terrify it, fill it with remorse!*

—Thomas Hardy

In 1881 Thomas Hardy penned the above-referenced quotation revealing his conclusions about the law, thus providing an excellent springboard into a survey of Hardy's "moral reasoning"<sup>2</sup> about the law's application as revealed in his prose fiction. The implications of Hardy's personally viewing two public hangings and observing the inequities of legal applications stimulated his social commentary that evolves from his moral reasoning. Hardy writes this bitter quotation after giving thoughtful consideration as to how a "scientific view of life" could be "reconciled" with the "emotional and spiritual so that they may not be interdestructive" (*Life* 153).

#### **I. Definitions of Law**

Hardy's cryptic term "Law" has puzzled scholars because it has taken on various definitions over the years. For example, Philip V. Allingham, in "The Novels of Thomas Hardy: An Introduction," believes that in the Novels of

Character and Environment, Hardy presents “a view that in life human actions have been predetermined, either by the very nature of things, or by God, or by Fate. . . [suggesting] that human will is not free but fettered.” For Allingham, “law” represents supernatural forces outside the human condition. Another scholar, Simon Gatrell, in his introduction to *Thomas Hardy and the Proper Study of Mankind*, believes that Hardy “considers essentially the same questions [that Pope addresses in *An Essay on Man*, *Epistle II.1.2*] in his novels: what external to us causes things to happen—God, fate, destiny, the Immanent Will? how do individuals stand in relation to their environment? how do individuals stand in relation to society? and what part do individuals’ own natures play in what occurs to them?” (2). Gatrell’s definition of “law,” then, is similar to Allingham’s in that each considers external sources that control individuals. Gatrell names the externals as “God, fate, destiny, and the Immanent Will” (2); Allingham comments that Hardy “saw men beaten down by forces within and without himself and sought to record man’s eternal struggle with fate.” Both critics, however, fail to consider other possibilities: 1) morals and values, the internal advisers and controllers of human actions, 2) another external, another fetter upon humanity—the legal system, and 3) how individual morals and values affect its application.

In 1987, Harold Orel writes in the Introduction to his work *The Unknown Thomas Hardy* that “[Hardy’s interest in human law (as opposed to divine law) and the dispensing of justice within law-courts] is a very ill-understood aspect of [his] life, barely mentioned in any of the biographies of the past decade” (10).



This comment by a respected Hardy scholar presents another possible interpretation of “law” as the term appears in Hardy’s prose and personal writings—a literal one. Melanie Williams in her 2002 text *Empty Justice: One Hundred Years of Law, Literature, and Philosophy* analyzes Tess’s fate (her hanging for Alec d’Urberville’s murder) in the portion of a chapter called “Tess of the D’Urbervilles and the Law of Provocation” (42-58). Williams, in considering Tess’s dilemma in the novel and her possible motives for waiting so long to murder Alec, compares Tess’s case to modern cases of battered wife syndrome, demonstrating a correlation between the two. Clearly, Williams also accepts a literal reading of Hardy’s term. Additionally, as recently as 2003, William A. Davis in *Thomas Hardy and the Law* takes Hardy at his word: “law” means jurisprudence and the legal system in England. Concluding the work, Davis argues the need to read Hardy’s works with both a literary as well as a legal eye, that “[to] study the law in Hardy’s novels is to open them up anew and reveal some of their author’s primary concerns” (184). Hardy’s “Law,” then, while capable of being interpreted metaphorically, also carries a literal meaning that encompasses all facets of the British legal system, especially as it spans the nineteenth century. Clearly, Hardy uses man-made, social law (both civil and criminal) as a catalyst in his characters’ lives, demonstrating how completely enmeshed the law is with their lives. The subtlety with which he questions the morality of the law’s application within his plot structures has caused him to be overlooked as a critic of the Victorian legal system.

## II. Criticism of law within literature

Prior to 1965, the inter-relatedness of literature and the law in literary and legal criticism may have been seriously questioned. But with the 1965 publication of Charles A. Reich's article "Toward the Humanistic Study of Law" in *The Yale Law Journal* (74:1402-1408), a renewed dialogue between literary and legal fields began. Reich's article emphasizes the need to rejuvenate the teaching of law to include more than just the "methodology and approach" to practicing law (1402). He posits that since "law deals with human beings in their moments of greatest stress and in their most profound conflicts with each other and with society [,] the study of such institutions, and such questions, could have endless challenge" (1403). Since most of Hardy's prose reveals characters not only in their moments of greatest stress but also in conflict with each other and with society's law, it confirms Reich's assertion. Reich further states that the "law now permeates every activity" and that "this trend is inevitable as society rapidly becomes more institutional and bureaucratic," considering "today's social problems necessarily become legal problems" (1407). Although Reich's article speaks to the twentieth century, his comments have relevance to the Victorian Era, a time of burgeoning industrial growth, scientific discoveries, economic changes, legal reforms, and philosophical debates.

Reich's statement that "today . . . it is vitally necessary that lawyers actively participate in all of the areas of society in which law now plays a role" (1407) could easily have been the words of a Victorian Member of Parliament (MP). In observing that a lawyer's "work may start with business," Reich lists

“criminal law, public housing, social welfare, unemployment, problems of the mentally ill, urban town and country planning, economic planning both local and national, civil rights, civil liberties, all forms of protest movements, and international law” (1407) as areas of concern for modern attorneys. This twentieth-century list echoes many of the same areas of concern for Victorian solicitors and barristers. The capitalistic, bureaucratic, and institutional upheaval of Victorian society creates more areas for the law’s intrusion into individuals’ lives. For example, mass migration of people to the cities for work leads to the necessity of labor laws, sanitary laws, and even railroad regulatory laws. Too, the shift in social conventions during the Victorian period, especially the loosening of the ecclesiastical courts’ hold over some aspects of society, leaves room for reforms of the marriage laws, inheritance laws, tenancy laws, and other laws pertaining to human relationships. Reich’s comments about the society of America in 1965 appear applicable to the society of England in the mid to late 1800s.

Reich’s article fostered the field of studies now known as “law and literature,” and it received strong support from J. Allen Smith in his 1979 article in which he contends that modern “lawyers have a dishonest reputation,” due in large part to their “inability to communicate with the public” (14). Smith’s article refers to problems modern attorneys face in speaking, writing, and interacting with their clients as well as with the public; an analogous relationship exists between Victorian barristers/solicitors and an individual’s access to legal information. Limited access to legal advice for all but the middle and upper

classes compounds the difficulties Victorian lawyers have in communicating with the public. Likewise, because of the mass migration to the cities and the limited rural educational facilities, individuals living in the countryside had fewer venues from which to obtain valid and clear legal advice; therefore, they often remained at the mercy of the judicial system. When explaining the possible avenues for correcting twentieth-century attorneys' poor communication skills, Smith describes a renaissance in the teaching of literature with the study of law (16-19). He even suggests that if "law teachers viewed literary works in the same sense that they view statutes and cases, the fusion of law and literature would move apace" (22). Finally Smith asserts, "We cannot move society without some ordered structure and the means for people to develop it," and while society provides "variable" "sources of law," "literature" serves as a means to "unite" us (26). Examining the works of Hardy and other Victorians confirms that, as they watch society move and grow into a more ordered structure requiring reforms of existing laws and the creation of new laws, they form literature for their age that brings attention to those areas that divide society and to those who use and manipulate the legal system for their own benefit. They therefore create works that speak to legal dilemmas in their own age, works that have an historical tracking of changes and that point to resonating bridges for future changes.

Since Smith's article appeared, literary scholars and lawyers alike have begun exploring what a joint analysis of a text can reveal. Richard A. Posner's 1988 text *Law and Literature* demonstrates the interconnectivity of these two disciplines. Ian Ward in his 1995 text *Law and Literature: Possibilities and*

*Perspectives* acknowledges a debt to Smith's 1979 article and differentiates between "law *in* literature" and "law *as* literature" (original emphasis) (3). Ward explains "'law in literature' examines the possible relevance of literary texts, particularly those which present themselves as telling a legal story, as texts appropriate for study by legal scholars" (3). As recently as 1999, Kieran Dolin in *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* has extended this hybrid of literary scholarship to demonstrate how "strands including an evidentiary model of narration, a plot concerned with the commission and rectification of crime and civil wrong, and the adoption of a critical tone with respect to official agencies of law" "connect the novel and the law during the nineteenth and early twentieth centuries" (2). Dolin's assertion about the law and its relationship to literature provides an approach for studying Hardy's prose and his use of the law.

### **III. Victorian social philosophy and effects of the Industrial Revolution**

What constituted Victorian thinking and action prior to and concurrent with Hardy's prose career, as well as how that thinking affected society, warrants a brief consideration before any discussion of Hardy's attitude toward the Victorian legal system can be attempted. The term "transition" best describes the time in which Hardy lived. Seven years prior to Hardy's birth, Edward Bulwer [Lytton] in *England and the English* (2:165) notes that "every age may be called an age of transition—the passing-on, as it were, from one state to another never ceases; but in our age the transition is *visible*" (qtd. in Newsome 1). Likewise, when Hardy is eighteen, Sir Henry Holland writes in "The Progress and Spirit of

Physical Science” “that we are living in *an age of transition*” (qtd. in Houghton 1). Similarly, writers, scholars, and eminent Victorians such as Benjamin Disraeli, Thomas Carlyle, Mathew Arnold, Prince Albert, and John Mill consistently use the words “transition” and “transitional” in writing about their era (1, note 2). Sweeping changes occur in the arenas of economy, manufacturing and technology, religion, and politics; few, if any, areas of society resist the transformations. Growing up as the Utilitarian movement reaches its apex, Hardy watches the legislative and social reforms that occur as an outgrowth of this philosophy. His prose conveys this metamorphosis as reflected in all levels of English society and culture, but most especially in that of the poor.

Born June 2, 1840, Hardy arrives in the middle of this era of change, a change that occurs both within individuals’ lives and within the legal system. Hardy’s childhood takes place in a world desperately struggling to define itself. This definition develops out of conflict—conflicts between divergent ideologies, between established and emerging social classes, between rejecting or embracing scientific advancements. A. V. Dicey, in *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, identifies the basic ideological conflict as the struggle between Benthamism (or Utilitarianism), the best interests, or happiness, of the individual, and Collectivism, the best interests, or social consciousness, of the State (xxxi). The struggle between these two philosophies engenders significant reforms that begin before Hardy’s birth and continue into the twentieth century. According to an excerpt from Henry Brougham’s *Speeches*, Jeremy Bentham, considered to

be the foremost legal philosopher of his day and the first to examine the underlying structure of the British legal system, advocates a restructuring of the British laws and courts to “[adapt] to the circumstances of society, to the wants of men, and to the promotion of human happiness” (qtd. in Dicey 127). While Bentham reacts against the Romanticism of the latter part of the eighteenth century, deliberately removing human qualities such as “generosity, mercy, compassion, self-sacrifice, [and] love” from his equation (Altick 117), he strongly believes that by “exposing the defects of the English system of jurisprudence,” he will be able to “remodel the law of England in accordance with utilitarian principles” (Dicey 127). As more men in positions of influence accept and endorse Bentham’s premise, the earliest reforms of outdated British laws and the court system begin, allowing support for Utilitarianism to peak in the 1850s (Altick 114). These philosophical struggles occur during Hardy’s formative years when he obtains his education and observes his surroundings, both of which play key roles in his literary future.

By the time Hardy is born, the Industrial Revolution has significantly changed the face of English society. Yet the contradictory nature of the Industrial Revolution, with its concurrent individual benefits and social detriments, invites philosophical debate. The dichotomy between the Industrial Revolution and its resulting effects mirrors the philosophical struggle between an individual’s best interests (Utilitarianism) and society’s best interests (Collectivism). Few can argue that the Industrial Revolution dramatically changed life in the nineteenth century; however, the beneficiary of those changes remains unclear. On the

surface, society appears to improve because of breakthroughs in transportation, manufacturing, and science. Railroads shorten travel time, factories mass produce goods to sell, and science advocates the survival of the fittest. Because the “development of commerce [draws] man off from the land and [opens] new and *independent* careers to talent” (emphasis added; Houghton 4 note 16), the individual reaps the greater benefit from these dramatic changes. Opportunities for increasing personal wealth and obtaining improved social status reflect the Utilitarian philosophy with its emphasis on improving the individual’s status in life.

Just as individual benefits multiplied, so, too, did social detriments. While the average “middle class man” might praise the efficiency of “his letters [being] posted twelve times a day from Islington to Camberwell” and their return, with “railway-trains [running] to and fro between them every quarter of an hour,” he fails to notice that the “trains only carry him from [one] illiberal, dismal life” to another and his “letters only tell him that such is life there” (Arnold, *Friendship’s Garland*, qtd. in Altick 110). In condemning his century’s progress, Matthew Arnold subscribes to the collectivist philosophy and decries the benefit of the individual at the expense of society. Scientific and technological advancements explode, outpacing social and moral progress and revealing a need for reform in all aspects of society. The Industrial Revolution, with its accompanying exodus of people from the rural countryside to the mechanized cities and towns, creates far-ranging effects that demand reform measures: 1) an economic shift from an agrarian to a manufacturing foundation; 2) the growth of financial power in the



emerging middle class; 3) a wide-spread demand for greater participation in governmental affairs; 4) a need for better educational systems with wider access; and 5) a restructuring of the judicial system. Judicial reforms that replace existing, out-dated laws as well as create new courts illustrate the attempts to balance the best interests of an individual with those of society, many times with limited success. The reform “of the law” occurred as a “response to changing economic and social positions . . . in a time of rapid transition” (Holcombe 4). Although specifically addressing the law with respect to women’s rights, Holcombe’s words apply equally to the legal and social reforms occurring across all spectra of society. Just as Dickens, Macaulay, and Tennyson had realized that progress, unless it “contributes to the enrichment of a human being’s existence,” “is worthless” (Altick 110), so, too, does Hardy, and, using his concept of moral reasoning, he adds his voice to the advocates for legal reform.

By the time Hardy is born, England has already witnessed some sweeping reforms, most notably the Reform Act of 1832 that “disfranchised a number of corrupt boroughs, and bestowed on a limited number of citizens belonging mainly to the middle class, the right to vote for members of Parliament” and demonstrated to the people that “venerable institutions,” once thought “unchangeable,” could be reformed without force and bloodshed (Dicey 42). According to David Cooper in *Lessons from the Scaffold*, Parliament, recognizing another area ripe for reform, examines “a number of anachronistic laws previously punishable by death” (such as rick-burning and sheep-stealing) and abolishes many of them “between 1832 and 1837” (42). Concurrently, the

Benthamites refuse to acknowledge the need for socially-oriented legislation, their “major exception” being an “advocacy of state-supported and state-inspected elementary education” (Altick 133). Consequently in 1833, according to Marjie Bloy in “Victorian Legislation: a Timeline,” as society sees the need for a better-educated work force, Parliament approves the first educational grant of “£20,000 for the provision of schools,” marking “the first time government had involved itself in education in any way. Although this grant proved a first step to broadening the educational opportunities for all children, the first Education Act that held parents “responsible” for sending their children to school will not occur until 1876 (Bloy). The year 1834 sees the passage of the Poor Law Amendment Act, establishing work houses (Bloy), while 1836 heralds the Civil Marriages Act, allowing people to marry outside the Anglican Church (Bloy). In 1837 the Registration Act becomes law, requiring the recording of all births, marriages, and death (Bloy). The resulting effects of these laws serve the interests of the nobility and upper classes still in control of Parliament and/or the entrepreneurs and merchants of the rising middle class. Since “legislation and court decisions” during this time “tended to favor property rights over human ones,” whenever Parliamentary debates or court rulings favored human rights, “it was often counted a famous victory” (Altick 134). The history of social reform in the period might well be written in terms of the conflict between the two rights. The conflict, generated by these early reform measures and their attendant social concerns, mirrors the corresponding tension between the individual and society; Hardy

uses these conflicts and tensions between the individual and the law as the underpinnings in his prose.

#### **IV. Previous studies relating to Hardy's use of the law**

Hardy's use of law has generated interest for several scholars in the past. Four critics have examined the legal underpinnings of Hardy's prose: Edward C. Sampson, Harold Orel, Melanie Williams, and William A. Davis. Beginning with his 1977 article "Thomas Hardy—Justice of the Peace," Sampson paves the way for later critics interested in Hardy's connections with the law. In revealing Hardy's role as a justice of the peace for the "Borough of Dorchester" and subsequently for the "County of Dorset" (263), Sampson establishes one key connection between Hardy and his use of legal conflicts in his prose upon which this study builds: Hardy's working knowledge of the law. Sampson strengthens this connection; he provides copies of the oaths Hardy signed as he assumed his duties as a city magistrate in 1884 (264-5), and the additional one he signed to become a county magistrate in 1894 (267). Using accounts published in the *Dorset County Chronicle*, Sampson extends the connection by including samples of the cases over which Hardy and the other magistrates presided (255-6); some vestiges of these actual cases appear as similar cases in Hardy's prose (256 note 6). Furthermore, Sampson demonstrates the varied nature of the cases Hardy participated in, showing that "they covered a broad range of human experience—bigamy, indecent and criminal assault on young girls, theft, fraud, incest, forgery, arson, rape, attempted murder and murder" (270). Finally Sampson, concluding his review of Hardy's legal life, reveals how Hardy's

contemporaries viewed his contribution to the law: the magistrates of the Borough Petty Sessions, “where he [Hardy] had served the most,” “stood in silence of Thomas Hardy” in the first session following his death in 1929 (272). Sampson attributes this silence not only to their acknowledgement of Hardy’s fame as a writer but also to their recognition of his service to the law. With his brief article, Sampson has pioneered the study of Hardy’s use of the law, providing valuable information for future Hardy critics. To explore Hardy’s views on capital punishment and about the law’s inequitable application, this study builds upon Hardy’s oaths of office that Sampson includes and on his comment concerning Hardy’s hearing of a “broad range” of cases.

Another critic interested in Hardy’s use of the law provides additional information: Hardy’s view on capital punishment. Harold Orel reveals Hardy’s concerns for “problems created by the administration of human justice” (128) leading to his interest in capital punishment (133). Orel suggests five areas that focus on Hardy’s interest in the law with respect to social consciousness: 1) the “workings of justice,” 2) the “basis of a judge’s verdict,” 3) the necessity for “human laws and human judges,” 4) the existence of “a hardness of spirit among . . . all social classes,” and 5) the belief that international war represents the “ultimate crime” for which “no tribunal” had yet “been devised” (135). All but the last area suggested by Orel establish points this study builds upon: how the application of the law reveals Hardy’s sense of morality.

A third Hardy critic, Melanie Williams, touches upon Hardy’s sense of morality in her 1996 article “The Law of Marriage in *Jude, the Obscure*,” as well

as in her 2002 text *Empty Justice: One Hundred Years of Law, Literature, and Philosophy*. Both of these texts provide one underlying point this study expands upon: Hardy's blending of a moral dilemma within a legal context. Williams asserts Hardy considers "moral [crimes] which the law could not address" ("Law of Marriage" 181) while she further suggests Hardy's "potent critique of legal mores recognizes the interplay between cultural values and legal blind spots" (*Empty Justice* 51). Her recognition of Hardy's moral consciousness supplies ideas this study examines more fully: the "interplay" between Hardy's moral reasoning and his extensive knowledge of the law.

William A. Davis, the fourth and most recent critic of Hardy's use of the law, provides this study with a method of representing the "interplay" between Hardy's use of moral reasoning and the law: the presence of recurring patterns of legal complexities within Hardy's works (183). Davis also provides additional background on Hardy's personal knowledge of and familiarity with the law, reminding the reader Hardy serves "as an active magistrate longer than . . . a practicing novelist" (17). Furthermore, Davis points to Hardy's "detailed notes on current and past cases as reported in the *Times* and the *Dorset County Chronicle*" that he collected in an "unpublished notebook entitled 'Literary Notes III: Facts from Newspapers, Histories, Biographies, other Chronicles (mainly local)' now kept in the Dorset County Museum" (17). This work builds upon information Davis provides about Hardy's "lifelong fascination with crime and punishment" (19) and the additional background on Hardy's legal research (18-30) as it suggests how Hardy uses moral reasoning to demonstrate the need for

balance in applying the law and to reveal his emerging criticism of capital punishment.

These four major critics of Hardy's use of the law in his prose have focused on specific aspects of his style while only lightly touching upon the areas that concern this study. Sampson acknowledges Hardy's comment about his attitude toward capital punishment "[operating] as a deterrent from deliberate crimes against life" (264), but omits Hardy's second sentence about the morality of the act. Likewise, Orel's work comments on Hardy's interest in capital punishment, indicating Hardy's concern about whether the crime committed merits the punishment assessed (130). Furthermore, it quotes Hardy's comment on capital punishment but adds Hardy's second sentence about "the moral right of a community to inflict that punishment" (133). Orel interprets this second sentence to mean Hardy "[concedes] that justice might err . . . but the existence of capital punishment . . . possessed an intrinsic, and . . . deterrent effect" (133). Orel also mentions the hanging of Martha Brown "whose execution Hardy witnessed" (138); however, Orel does not make a connection between Hardy's witnessing the execution and his attitude toward the law's morality, especially capital punishment. Williams comments on Hardy's use of the law for moral purposes ("Law of Marriage" 185), but she does not connect it to Hardy's concept of moral reasoning. Finally Davis, in his work, suggests Hardy's witnessing of a hanging as a young man leads to his "lifelong fascination with crime and punishment" (19); he does not, though, use it as the main thrust of his study that instead thoroughly analyzes Hardy's application of the laws surrounding the

relationships between men and women, specifically courtship, marriage, and divorce. At the end of his work, Davis suggests that further examinations concerning Hardy's use of the law remain to be done, that additional emphasis could be given to areas he examines in brief—the problems of breach of promise, bankruptcy, inheritance or tenancy laws. He does not consider, however, how Hardy uses the law to reveal his attitude toward capital punishment. My intent in this study is to link Hardy's interest in the law to his concept of moral reasoning and to the impact of his witnessing the hangings in his youth. Additionally, my study fills in a gap each of the critics has recognized as existing in Hardy's work but has not explored: namely how Hardy weaves the law into his examinations of moral reasoning and how his attitude toward the morality of capital punishment emerges.

## **V. Hardy's concept of moral reasoning**

Hardy's concept of moral reasoning provides a standard against which he weighs the application of social and legal justice. Hardy's interest in reasoning stems in part from his reading of Francois Marie Charles Fourier (1772–1837), a French social theorist who explored the connection between three abstract principles of humanity: active, passive and neutral. His writing entitled in English *The Passions of the Human Soul* (LN 1:240) led Hardy in 1863 to create a memorable entry that begins his literary notebooks. There within the context of Fourier's writing, he records his interest in moral reasoning or "moral harmony" (LN 1:3-4). Although cryptic when examined away from the context of Hardy's works, the fact that it initiates the notebooks gives it a prominent place in Hardy's

development as a writer. As a key element of my study, the notebook entry warrants further discussion. Representing his interest in moral reasoning or “moral harmony” on the first pages (*LN 1:3-4*), Hardy’s entry consists of three parts. In the first part he outlines the attributes of “the Action or Energy,” the “Emotions,” and the “Intellect” (*LN 1:3*) (See Figure 1). In the second, Hardy identifies “character” as a “conglomerate or pudding-stone” that he represents by three genealogies though Hardy here renames “The Action or Energy” as “the Will”; next to the diagram he labeled “Unityism in Harmonic development,” Hardy lists its attributes using scientific classification (*LN 1:3*). Hardy’s third section of the entry differs dramatically from the first two in form but not in content. The third section of this entry records Hardy’s artistic representation of the material contained in the preceding two sections. The page contains “diagrams” of two trees, a cross-section, and a representation of life-energy all “designed by Tho<sup>s</sup> Hardy 1863” (*LN 1:4*) (See Figure 2).<sup>3</sup> In rendering his diagrams, Hardy moves from using the left hemisphere of his brain for the scientific, rational outline to using more of the right hemisphere for the creative artistic sketches concerning the same material. How Hardy changes the way he represents the same information shows the progression of his thinking; initially Hardy uses an outline, a purely logical approach (Intellect), and then moves to an outline containing some artistic influence but still displaying more logic an emphasis on terms and lists (an attempt to balance the Intellect with the Passion). Finally, he sketches an artistic rendering of a tree with specific parts labeled, thus striking a more complete balance between the Intellect and the Passion. This progression



prefigures the struggle between the Intellect and Passion for control of the Will, a pattern Hardy develops in his prose.

Hardy's two tree diagrams and his sketch of the cross-section connect his thinking and his social commentary. The tree in the lower left corner of the page rises above the word "Humanity" (*LN 1:4*) (See Figure 2). Hardy places Passion as the tree trunk, with Intellect and Will as vines that encircle the trunk, perhaps restraining the Passion. By placing the tree above the term "Humanity," Hardy implies that the personal elements of the Passion, the Intellect, and the Will apply equally to society as a whole. This sketch appears less complete than the tree to the upper right; perhaps it represents Hardy's initial concept of the relationships among the Passion, the Intellect, and the Will, one that reflects control rather than balance and mutual harmony. In the diagram to the upper right, Hardy unites the Intellect, Passion, and Will within one organic structure, a tree—perhaps the Tree of Knowledge in the Garden of Eden, depicting an ideal representation of moral reasoning. Still, one must remember the Tree of Knowledge represents both life and death. For Hardy, the tree also becomes the gallows tree. Hardy embellishes this tree more completely, dividing the lower portion into roots that he names Intellect, Passion, and Will. On each of these roots, Hardy sketches a representation he calls "The Infinite Monster of the [Intellect, Passion, and Will, respectively]" (*LN 1:4*) (See Figure 2). The embellishment on the section labeled "Passion" appears to possess two points that protrude from its top while the remainder of the embellishment takes the shape of an apparent visage, suggesting a satanic figure. That Hardy renders

“the Infinite Monster of the Passion” as satanic in appearance reveals his attitude on this aspect of an individual’s reasoning: Passions uncontrolled or uninfluenced by Intellect cause diabolical consequences, an attitude he employs later in his novels. Hardy’s depictions of the “monsters” of Intellect and Will remain outlines only; perhaps he simply did not complete them, or, more likely, he believes that while these “monsters” exist, they may not be as diabolical and destructive as the “monster” of the Passion.

Approximately two-thirds up the tree, Hardy draws a line that begins on one side, cuts through the trunk, and extends beyond the other side. On the trunk of the tree at the level of this line, Hardy has written “Amalgam<sup>n</sup>,” (*LN* 1:4). Hardy clearly indicates that for individuals to achieve “moral harmony” and progress upward to the “Affective Dominants” of “Friendship, Love, Familism” [sic], and “Ambition” (*LN* 1:4), they must achieve a balance within themselves among the Passion, Will, and Intellect. The struggle to achieve this balance drives the plots of his novels and short stories, as this study shows. Hardy further clarifies this attitude toward the three aspects of reasoning in the tree’s cross-section shown in the lower right-hand corner. The cross-section reveals Will in the center, surrounded by Intellect, with Passion completely encircling both. To the left of the drawing, Hardy describes the relationship most beneficial for these three aspects of reasoning: “Intellect—the adviser to P & W” (underlining original; *LN* 1:4). He clearly intends for the Intellect to advise the Passion and the Will but not to control them. Hardy ideally places control over an

individual's life within the individual—he or she alone determines his or her future.

Hardy's interest in what advises an individual extends to an interest in what advises a society. For Hardy, Intellect, Passion, and Will ideally reside within one body and exert control over the individual only; unfortunately, neither his characters nor his readers exist in a utopian society, and that society, too, must have something that exerts control over it. In both cases, he selects the Intellect as the controller/adviser: for the individual, it is an internal Intellect; for society, an external. For an individual, it is logic; for society, the law. As Hardy creates literature illustrating the problems he observes within society, he draws upon his concept of moral reasoning and his interest in the law to produce appropriate plots. To demonstrate the inseparability of an individual from the law, Hardy's plots contain numerous legal conflicts to which the characters must respond, with either the Intellect or Passion dominating. Rarely do Hardy's characters demonstrate the balance of the Passion, Will, and Intellect that their creator believes necessary to survive. Hardy observes that an individual often relinquishes control (personal Intellect) to an external control (social Intellect), a control represented by knowledgeable professionals such as architects, physicians, and lawyers, to name a few. The law then, and by extension, society's application of it, often causes the downfall of one or more of Hardy's characters, sometimes resulting in executions.

## VI. Significance of hanging images

That Hardy includes executions—hangings—in his prose surprises no one, though his purpose for doing so has not been explored previously. One reason for Hardy's repeated use of hangings and near-images of hangings may stem from a pivotal time in Hardy's life when he witnessed two hangings—one at sixteen, the other two years later (Gittings 32-5). As mentioned above, at sixteen, Hardy witnesses the hanging of Martha Brown for the murder of her husband, standing "so close" to the gallows "he could actually see her features through the rain-damp cloth over her face (32). That this particular hanging created a lasting effect on Hardy's work appears certain; according to a paragraph printed November 2, 1904, in *The Sketch*, Hardy received from witnessing the hanging at least "emotional inspiration and some matter for 'Tess of the D'Urbervilles' [sic]" (qtd. in Gittings 34). Though the date of July 1856 that Hardy recalls for his witnessing of the second hanging of James Seale (*Life* 32) occurs "almost exactly two years to the day" of Martha Brown's execution (Gittings 34), it conflicts with the date of August 10, 1858, that Gittings establishes (35). Nevertheless the account remains the same, and the power of the event so impressed Hardy that many years later he vividly recalled it for inclusion in his autobiography (Davis 19). Its significance to Hardy's writing justifies including herein the lengthy description. Hardy's fascination begins as he looks through a telescope:

One summer morning at Bockhampton, just before he sat down to breakfast, he remembered that a man was to be hanged at eight

o'clock at Dorchester. He took up the big brass telescope that had been handed on in the family, and hastened to a hill on the heath a quarter of a mile from the house, whence he looked towards the town. The sun behind his back shone straight on the white stone façade of the gaol, the gallows upon it, and the form of the murderer in white fustian, the executioner and officials in dark clothing, and the crowd below, being invisible at this distance of three miles. At the moment of his placing the glass to his eye the white figure dropped downwards, and the faint note of the town clock struck eight.

The whole thing had been so sudden that the glass nearly fell from Hardy's hands. He seemed alone on the heath with the hanged man; and he crept homeward wishing he had not been so curious. It was the second and last execution he witnessed, the first having been that of a woman two or three years earlier, when he stood close to the gallows. (*Life* 32-33)

This recitation of the event by Hardy himself, as well as by Gittings (32-35) and Davis (19-20), illustrates the significance of these events to Hardy. Neither critic, however, reveals how the image of the last hanging reflects Hardy's own struggle with his Passion, Will, and Intellect. Hardy's Passion causes him to "hasten" to the hill from which he views the hanging. His Intellect reminds him to take the telescope in order to obtain a better view. Both his Passion and his Intellect set his Will in motion; he raises the telescope to his eye just as the figure drops

through the scaffold floor. Hardy, however, when he “[wishes] he had not been so curious” (*Life* 33), chastises his Passion.

Just as the incident reflects Hardy’s struggle with his internal Passion and Intellect, it reflects, too, an individual’s struggle against the external Intellect, the law. In describing himself as being “alone on the heath with the hanged man,” the older, mature Hardy clearly represents how individuals must face the repercussions of the law: alone. Hardy, continuing his reflection on the event by “wishing he had not been so curious,” indicates the suffering his telescopic view of the proceedings brought him. In actuality, the telescope enables Hardy to witness an event from a great distance; figuratively, the telescope permits him to peer deeply into lives of those affected by the law. Hardy can observe the perpetrator of the crime, the magistrates, the executioner, and all the members of the crowd who were present at the hanging yet who remained “invisible” to Hardy, and by extension, the rest of society. Thus, when Hardy views the hanging through the telescope (*Life* 32-3), he witnesses the ultimate power of the law—the right of society to deprive an individual of life, either literally or symbolically. Here, at the age of eighteen, Hardy may begin his early fascination with the law, the most pervasive external representative for the personal Intellect, and its repercussions for individuals.

Although previous scholars have examined Hardy’s use of law in his prose, my link connecting Hardy’s interest in the law to both his concept of moral reasoning and to his witnessing the hangings from his youth (Gittings 32-5) will fill a gap in Hardy criticism. Hardy sorts out how moral reasoning manifests itself

in human acts by blending his discovery of Fourier (*LN* 1:3, 240) with his reaction to those hanging events from his youth. This study examines how Hardy depicts human endeavor working itself out through the struggles of the Passion, the Intellect, and the Will. From his earliest sketch “How I Built Myself a House” through his last novel, *Jude, the Obscure*, Hardy peers into the lives of those affected by the law’s pervasiveness and their reactions to its application. By no means does Hardy imply that individuals lack free will; on the contrary, he maintains that an individual freely chooses the path upon which he or she walks (Morrell 140). Hardy does show, however, that an individual’s choices may be limited by the struggle between individual Passions and Intellect and social Passions and Intellect. Likewise, the choices may be limited because an individual lacks knowledge about the laws governing his or her actions and/or because of the law’s pervasiveness within society.

## **VII. Pertinent controlling questions**

Although Hardy includes numerous legal complexities within each of the texts considered, I will discuss only those legal entanglements most significant or pivotal to demonstrating Hardy’s perspective on the law. To see how Hardy’s concept of moral reasoning merges with and shapes his attitude toward society’s application of the law—especially capital punishment—leads us to ask questions about the inner workings of his prose style. The stylistic choices Hardy makes reveal answers to six pertinent questions that guide this internal investigation of Hardy’s works:

1. What legal issues other than those surrounding marriage exist within Hardy's novels?
2. How does Hardy incorporate these legal issues within his prose?
3. How does Hardy's concept of moral reasoning evolve as he matures as a writer?
4. How does Hardy respond within his prose to the hangings he witnessed?
5. How does Hardy's concept of moral reasoning affect his view of capital punishment?
6. How does his interest in the law reflect a social commentary?

Each of the chapters that follow examines representative works from Hardy's prose-writing career. Chapter Two focuses on his early period from 1865 to 1876, using the short sketch "How I Built Myself a House," and the novels *Desperate Remedies*, *A Pair of Blue Eyes*, and *Far From the Madding Crowd* to discuss Hardy's early conception of moral reasoning and how the law worked within society. In Chapter Three, concentrating on Hardy's middle years from 1877 through 1890, I examine Hardy's commentary on the moral reasoning, the law, and its intrusive presence in the lives of the people of Wessex (and, by extension, Dorset) using two short stories, "The Three Strangers" and "The Withered Arm," and two novels *The Mayor of Casterbridge*, and *The Woodlanders*. Chapter Four scrutinizes the last period of Hardy's prose writing—1891 to 1898—using one sketch from the short story "A Few Crusted



Characters,” his article “Maumbury Ring,” and the final two novels of Hardy’s career, *Tess of the D’Urbervilles* and *Jude, the Obscure*. This chapter examines his conclusions about the relationship between the individual and the law, between society and the law, and about capital punishment. The final chapter reflects the conclusions gained through this study and discusses areas for further research.

## CHAPTER TWO

### OPENING ARGUMENTS:

#### EVIDENCE OF LEGAL CURIOSITY IN HARDY'S EARLY PROSE<sup>4</sup>

Hardy's foray into social commentary about the law and the Victorian legal system begins subconsciously as he strives to become a published writer. Anxious to have his work accepted by a publisher, Hardy "[takes] account of the material he [has] to work with and the sort of structure he [wishes] to build" (Weber 37). His early prose works—"How I Built Myself a House" (1865), *The Poor Man and the Lady* (1868—unpublished), *Desperate Remedies* (1871), *Under the Greenwood Tree* (1872), *A Pair of Blue Eyes* (1873), *Far From the Madding Crowd* (1874), "Destiny and a Blue Cloak" (1874), and *The Hand of Ethelberta* (1876)—consciously reflect his architectural apprenticeship with John Hicks (24) and his knowledge of class differences (37-8), but he also includes his concept of moral reasoning gleaned from Fourier (*LN* 1:3-4) as well as his knowledge of capital punishment (Gittings 32-5). Each early work demonstrates how Hardy had absorbed the Fourier model of moral reasoning and use of the law: this chapter will limit its discussion to four representative works: "How I Built Myself a House," Hardy's first published sketch, *Desperate Remedies*, his first published novel, *A Pair of Blue Eyes*, his first serialized novel, and *Far From the*

*Madding Crowd*, Hardy's most popular novel during these years (*Life* 100). In each, Hardy examines how the law and the legal system affect the lives of his characters. Hardy includes images and near-images of hangings in his works not only to represent the hangings he witnessed as a young man but also to process the information about capital punishment he gathered while living in London (*Life* 40-56) during a period of intense debates surrounding whether public or private executions should prevail or whether executions should be abolished completely (Cooper 123-147). In this period, Hardy is unable to reconcile the brutality of capital punishment within his own concept of morality. Thus, he transfers that brutality into near-image reflections of the hangings he witnessed, ranging from tumbles from scaffolds to slips from cliffs to, finally, suicides by hanging. Although Hardy depicts no actual hanging as punishment for legal infractions in any of his early works, he uses these near-images to provide a way to introduce into the plot other legal issues that adversely affect his characters' lives: bankruptcy, tenancy, and marriage laws (breach of promise, clandestine marriages, divorce, collusion). Through the ways his characters react to these legal conflicts, Hardy demonstrates the pervasiveness of the law and the effect of its impersonal application upon their fortunes and futures.

In his prose sketch "How I Built Myself a House" published in *Chambers's Journal* in 1865, Hardy examines the nature of personal law versus societal law. One critic sees Hardy using this sketch as a means of exploring the nature of male/female relationships and making a comment on the nature of marriage (Turner 11-12). While this is a valid interpretation of the sketch, another reading

presents itself—one wherein Hardy satirically represents the contractual relationship between a prospective homeowner and an architect as the means of illuminating the narrator's struggle with his personal law: the Passion, Will, and Intellect. After giving background as to the reasons for building a new house and the search for a piece of property, Hardy shifts the focus of the sketch to the narrator's contractual dealings with the architect. The narrator presents the initial meeting with the architect to emphasize the couple's differing ideas for the layout of their home after he realizes "that there was no such thing as fitting *our* ideas together, do what *we* would" (emphasis added; *PW* 161). Hardy uses the impasse of their arriving at an agreement about the home's design to represent an adversarial struggle between an embodiment of the Intellect (the narrator) and an embodiment of the Passion (his wife Sophia, whose name ironically means "wisdom"), much like the adversarial relationship in a courtroom. Hardy creates a situation in which a mediator, a judge, is required—the architect, the embodiment of the external Intellect. As the narrator and his wife enter the office of the architect Mr. Penny, Hardy shifts the focus away from the narrator and his wife to the "busy-ness" of Penny and the business of the objects filling his office:

I began by telling him my business, upon which he took a sheet of foolscap, and made numerous imposing notes, with large brackets and dashes to them. Sitting there with him in his office, surrounded by rolls of paper, circles, squares, triangles, compasses, and many other of the inventions which have been sought out by men from time to time, and perceiving that all these were the realities which

had been faintly shadowed forth to me by Euclid some years before, it is no wonder that I became a puppet in his hands. He settled everything in a miraculous way. We were told the only possible size we could have the rooms, the only way we should be allowed to go upstairs, and the exact quantity of wine we might order at once, so as to fit the wine-cellar he had in his head. His professional opinions, propelled by his facts, seemed to float into my mind whether I wished to receive them or not. I thought at the time that Sophia, from her silence, was in the same helpless state; but she has told me it was quite otherwise, and that she was only a little tired. (*PW* 161)

By using a simple seven-word independent clause “*I began to tell him my business*” to begin the complex sentence, Hardy starts the passage with the focus on the narrator’s Intellect as the controller of his own destiny (emphasis added). As subject of the independent clause, the narrator, the determiner of his own fate, should remain the focus of the sentence; however, by introducing the architect within three words at the end of the independent clause, “upon which *he*” (emphasis added), Hardy subtly redirects the focus of the sentence and control of the narrator to the subject of the subordinate clause: the architect (the external Intellect), and the power he wields. By using “numerous imposing” and “large” to describe the notes and brackets the architect makes, Hardy keeps the focus upon the architect while showing how small the narrator feels, thereby enlarging the architect’s presence. The narrator’s control of the situation slips

further away from his grasp. Hardy follows this description with a rapid list of tools and geometrical concepts that the narrator realizes had been “faintly shadowed forth to [him] years before.” When the narrator admits that his familiarity with the geometric principles the architect employs is slight at best, Hardy completes his focal shift from the narrator to the architect, making him the master of the narrator’s fate. The narrator’s lack of sufficient knowledge of geometrical principles provides the opportunity for the architect to exert his will over the narrator much as social law exerts its control over individuals who possess little or no knowledge of their legal rights. Hardy has subconsciously connected an individual’s control over his or her destiny with the concept of informed judgment.

The narrator even acknowledges his loss of control as he states that it “[is] no wonder that I became a *puppet* in his [the architect’s] hands” (emphasis added) (*PW* 161). Hardy completes shifting the locus of control to the external source (the architect) as his narrator explains that the architect “settled everything in a miraculous way” (161). The knowledge and power of the architect clearly impresses and awes Hardy’s narrator, and he relinquishes control over the most personal of decisions: the arrangement of his home. The external Intellect’s control over the narrator’s life continues as the architect dictates the size of the rooms, the placement of the stairs, and the size of the wine cellar. When Hardy’s narrator states, “[the architect’s] professional opinions, propelled by his facts, seemed to float into my mind,” the pervasiveness of the architect’s control is complete, as the narrator bitterly concludes “whether I

wished to receive them or not,” considering himself in a “helpless state.” Hardy’s narrator looks to his wife Sophia for confirmation of their loss of control, but she simply admits to being “a little tired” (161). Hence, while the narrator’s Intellect searches for an explanation and Sophia’s Passion acknowledges only that it has lost its zeal, the external Intellect (the architect) uses the impasse between the two to gain mastery over both. Here Hardy represents a second way in which an external control, the law, possesses the ability to direct the destinies of individuals—in this case through their inaction, their unwillingness to make decisions. This inaction may be predicated upon the lack of information, but even conceding the narrator *may* have had additional knowledge of geometry, his choice *not* to act further permits the architect’s control of the situation. Likewise, an individual’s knowledge or ignorance of the law does not abrogate his responsibility to act in a manner promoting his or society’s best interests.

Although in this “helpless state,” the narrator attempts to regain a modicum of control over the situation. The narrator, “anxious all along that the stipulated cost, eighteen hundred pounds, should not be exceeded” continues to “[impress] this again upon Mr. Penny” (*PW* 161). The narrator knows the amount he may spend on this building, and acts accordingly upon this knowledge for his best interests. Hardy uses the narrator’s concerns and actions about the costs to help him try to regain his control; however, even this attempt fails. The architect agrees to give “an *approximate* estimate” of the costs, coming in after some adjustment, at “about eighteen hundred and seventy pounds” (emphasis added) (162). As the architect asks the narrator his opinion about the costs, it is Sophia

who answers that the cost is “exceedingly moderate.” Sophia had earlier removed herself from the discussion by claiming she had been “a little tired”; now she rejoins the conflict, chastising her husband’s prudent concern over finances by claiming the sum to be “exceedingly moderate,” a contradiction within itself. As Passion’s emotion reasserts itself in this struggle for control and once again silences Intellect’s logic, it permits the external Intellect to retain control. The underlying element of the sketch remains the narrator’s struggle between the Passion and the Intellect for control of the Will and his loss of that control. Hardy does not discount the importance of passion in his assessment of the law’s effect upon the individual, but he believes that passion must be balanced and constant. Therefore, Hardy’s interest in the effect of law upon the individual remains clear; reintroducing the element of Passion into the conflict between the personal Intellect and the external Intellect produces costly results.

Hardy further explores this adversarial struggle, quickly moving the reader through the building of the house to the inspection of the home by the narrator and his wife. At this point Hardy integrates a near-image of the scaffold and hanging he witnessed at sixteen into the narrative (*Life* 32-33). As the construction of the home nears completion, the narrator and his wife visit the site, and the foreman invites the narrator to climb up to the top of the house for an inspection. Sophia comments that she would accept the offer “if [she] were a man,” so the narrator accepts the invitation, even though he admits he is “not given to climbing” (*PW* 163). Sophia’s Passion has shamed the narrator’s Intellect into accepting the offer. As he agrees, the narrator’s personal Intellect



and Will submit to Sophia's Passion and he "[ascends] the ladder" though he cannot help but think about the precariousness of his position and "what a shocking thing it would be if any part [of the scaffolding] should break" (*PW* 164). The foreman gives voice to the narrator's fears when he comments that "[the narrator] may as well fall from here as from the top of the Monument for the matter of life being quite extinct when they pick [him] up" (164). Though the narrator does not fall from the scaffold, Hardy has prepared the reader for the ensuing death of the narrator's internal Intellect that occurs figuratively at the hands of the architect. Once again keeping the focus of the sketch on the narrator's loss of internal control, Hardy continues to blend his early views about the law's place within individuals' lives: the law, if given free reign over their lives, dominates heartlessly.

The figurative death-blow to the narrator's internal locus of control occurs at the final winding up of accounts, as Hardy returns to the literal contractual nature of building a home:

In getting a house built for a specified sum by contract with a builder, there is a certain pit-fall into which unwary people are sure to step—this accident is technically termed "getting into extras." It is evident that the only way to get out again without making a town-talk about yourself, is to pay the builder a large sum of money over and above the contract amount—the value of course of the extras. In the present case, I knew very well that the perceptible additions would have to be paid for. . . . But not keeping a strict account of all

these expenses, and thinking myself safe in Mr. Penny's hands from any enormous increase, I was astounded to find that the additions altogether came to some hundreds of pounds. I could almost go through the worry of building another house, to shew [sic] how carefully I would avoid getting into extras again. (*PW* 166-67)

Here Hardy deftly introduces the concept of actual Law as an external control and the false sense of security it engenders when the narrator comments about "getting a house built for a specified sum *by contract*" (emphasis added). The presence of a contract implies the imposition of civil legal penalties for non-compliance of the contract's terms. A sum had been specified for the cost of the house, but now the narrator discovers additional costs must be covered. Clearly the narrator has relied upon the contract to provide him with an expectation of protection in this business matter, "thinking [himself] safe in Mr. Penny's hands," but he admits the necessity for others to be "wary" to avoid the "pitfalls" he has encountered of having to pay for the "extras." By lacking sufficient legal knowledge about paying for "extras" prior to entering into the contract, the narrator creates the dilemma in which he finds himself. Although Hardy does not give the reader all the terms of the contract, he correctly portrays the dilemma facing individuals in a contractual relationship: either adhere to the terms of the contract or risk social chastisement and/or further legal difficulties. While the choice remains the individual's, either can cause disastrous results: in this case, enduring further financial difficulties or suffering social castigation. Having believed himself "safe in Mr. Penny's hands," the narrator was "astounded to find

that the additions altogether came to some hundreds of pounds”; nevertheless, he chooses to pay for the extras, perhaps creating financial difficulties for himself. Hardy’s narrator attempts to regain his internal locus of control (his Intellect) when he firmly states that “I could *almost* go through the worry of building another house, to shew [*sic*] how carefully I would avoid getting into extras again” (emphasis added). He still falls short, however, by using the word “almost.” This qualifying term indicates the narrator realizes that in business dealings, he submits his Intellect to that of another, even perhaps to that of society. At this point, he is unwilling to subject himself to this sort of control again, though, of course, both Hardy and the reader know that if the narrator chooses to continue in life, he ultimately will have no choice but to do so. With this short sketch, Hardy depicts the struggle between the Intellect and Passion. He shows their lack of total control over their Intellect and Passion that many of his characters possess, though not their lack of free will. Hardy has taken the small step of using the law with its external control over individuals’ lives as a method of plot development. He continues exploring the law and its effects on individuals in his novel *Desperate Remedies* (1871).

In *Desperate Remedies*, set initially in the years 1835-36 and subsequently in 1863-67, a woman’s thwarted dreams cause her to manipulate the lives of others, leading to their destruction as Hardy presents a tale employing melodramatic elements that naturally involve entanglements with the law. According to Orel, “Hardy [begins] his interest in human laws and courts of justice by paying close attention to the lurid and *melodramatic* tales about

smugglers, murderers and prisoners that [are] current in the Bockhampton and Dorchester of his youth” (emphasis added; 144). Mysterious family histories, vulnerable heroines, confused identities, and nefarious villains constitute stock situations in this melodrama; however, for Hardy, conflicts in this novel revolve around legal entanglements such as inheritance, employment, blackmail, contract law, identity theft, bigamy, and murder. These legal entanglements reflect some of the laws enacted during the story’s time period. Bloy indicates significant legislation enacted during these years includes the Poor Law Amendment Act of 1834; the Civil Marriages Act of 1836; the Registration Act [of Births, Marriages, & Deaths] of 1837; the Rural Constabularies Act of 1839; the Companies Act of 1844; the Poor Law Act of 1847; the County and Borough Police Act of 1856; and the Matrimonial Causes Act of 1857.

Although each of these Acts plays a part in the novel, I examine only the three that provide a foundation for Hardy’s struggle between the Passion and the Intellect and allow him to manipulate his hanging motif. The first pivotal legal situation in the novel follows the death of Ambrose Graye after he falls to his death from the scaffolding of a building he is inspecting (*DR* 15). Gittings maintains that undoubtedly Hardy “[is] remembering the hanging when he [writes] the novel” because the image of the accident parallels the execution Hardy witnessed through the telescope (35). Gittings does not explain, though, that Hardy’s including this near image of a hanging affords him a two-fold opportunity for social commentary: first to show the law’s pervasiveness in life and second to represent his concept of moral reasoning. Although Graye’s death results from

an accident rather than as a result of criminal prosecution, the same result ensues for his children. It catapults Hardy's heroine into a legal morass from which she has few means of escape. Simultaneously Graye's death removes the parental, external Intellect that has advised/controlled his children's lives. Thus, it allows Hardy to explore the law in its role as external Intellect while foreshadowing the role law plays in the novel.

At this earliest stage of the novel, Graye represents, as parents often do, the external Intellect for his son Owen and daughter Cytherea, ages nineteen and eighteen respectively, as they rely on him for financial support and guidance. The reader learns that Ambrose Graye, because of desperation (Passion) and his lack of sufficient knowledge (Intellect), has engaged in some poor business dealings from which he is only beginning to recover at the time of this death. Graye's investment could have been prevented had he sufficient knowledge of the laws of his time, specifically the 1844 Companies Act that required companies to register publicly and to provide regular accounting reports (Bloy). With the passage of this Act, the government attempted to "prevent" the kind of "reckless speculation" (Bloy) in which Graye had participated. Had Graye not invested in an "unfortunate speculation" (and Hardy describes him as "ignorant of all such matters") (*DR* 16), he might have had a more secure estate to bequeath to his children. When Cytherea excuses his gloomy disposition and poor business dealings as a result of the unfortunate experience he suffered in his youth (*DR* 17), Hardy again introduces the concept of informed decision-making and a balanced passion. The law to protect him exists, but it can protect only

those who are aware of it. Because of his “open-hearted trustfulness” and his “duty” toward his children (*DR* 16-17) (Graye’s Passion overriding his Intellect), the elder Graye has acted unwisely in his financial dealings, and now his children must rely on their own internal Intellects for their financial sustenance and self-guidance, young and inexperienced as they are.

Following their father’s death, the administration of his estate passes to the Courts of Chancery (*DR* 18), leaving little to sustain his children. This small detail represents Hardy’s first obvious legal complication in the novel. As a legal practice commonly employed to settle the accounts of a decedent, estates passed into the court of Chancery on a regular basis. In fact, the Chancery Court “paralleled and in some cases superseded the courts of common law . . . [in dealing] with cases where justice might not be served by a strict application of common law, and especially in disputes over the settlement of estates” (Rimmer *Notes* 410, n. 14). Hardy uses a small legal proceeding that creates a significant impact upon the estate’s survivors to demonstrate the law’s invasive nature into ordinary individuals’ lives. The fact that Owen and Cytherea will have little or no finances on which to live after the estate’s debts are paid matters little to the Chancery Court. Business dealings had been entered into and disbursement of the few funds remaining in Ambrose Graye’s name must occur. With this legal entanglement, Hardy reveals society’s Intellect acting without *com*-Passion,<sup>5</sup> a belief he reiterates in later novels. That Hardy presents this event *dis*-Passionately, like a mathematical equation that must be balanced, prefigures his 1881 observation about the Law’s lack of consciousness.

The ensuing effects from the administration of Graye's estate are distinctly out of balance for Cytherea. Even though she "has been carefully educated" (*DR* 21), the reader watches as she attempts to provide for herself so as not to be a further financial burden upon Owen. Unless Cytherea secures employment, she risks having to live in one of the poorhouses for the indigent established by the Poor Law Amendment Act of 1834 (Bloy)—those that had been nicknamed "Poor Law Bastilles" (Altick 122). Confident in her own abilities, Cytherea initially advertises for a position as a "governess" (*DR* 22), then as a "nursery governess or useful companion" (41), and ultimately as a "lady's maid," a position Owen views as a "disgrace," and he instructs her to remove the adjective "inexperienced" from her advertisement (53). Owen's request reveals his unbalanced Passion (pride) overriding his Intellect (Cytherea's need for financial security). At this point, Cytherea's internal Intellect submits to the external Intellect of her brother Owen. Although she removes the term "inexperienced" from her ad, she nevertheless manages to secure employment with Miss Aldclyffe, the manipulator of the novel, first as a lady's maid (59-60), then as a companion (89). As the novel continues, the reader sees Cytherea submit her Intellect not only to Owen, but also to three major characters: Edward Springrove, Aeneas Manston, and Miss Aldclyffe, whom Hardy ultimately reveals as Ambrose Graye's lost love. Hardy uses Ambrose Graye's death and bankrupt estate along with Cytherea's desperate search for employment to demonstrate not only the impartiality of the law with regard to an individual's survival but also Victorian society's insistence upon an individual's self-reliance.

Another pivotal legal situation encountered early in the text, Miss Aldclyffe's engaging a Land Steward, demonstrates Hardy's view of the adversarial relationship between the Intellect and the Passion. Though the astute reader already knows that Aldclyffe will select Manston to manage her estate, Hardy spends the entire fourth and fifth sections of Chapter VII in Book I recounting the selection process and interview experiences at her solicitor Nyttleton's office. So much text devoted to a seemingly inconsequential scene begs the question: why does Hardy devote so much text demonstrating the intricacies of the procedures taken and the employment of solicitors to accomplish the task of selecting someone to run an estate when it is a foregone conclusion? Early in this scene, Hardy establishes Nyttleton as the external Intellect and Aldclyffe as the Passion. Throughout his dialogue with her, Nyttleton uses logic and sound reasoning to justify his choice of a suitable candidate for Knapwater House. He reminds Aldclyffe that her "opinion *may* be perfectly sound and reliable," but he quickly counters that position by indicating that a man's opinion is derived "after laborious round-about *calculations*, based on long experience" and proceeds to deny recommending her selection of Manston (emphasis added) (*DR* 113). Intellect here prides itself on its logic, belittling Passion's opinion. Nyttleton continues with his indictment of Manston by reminding Aldclyffe that 1) Manston failed to reply until the "last insertion" of the advertisement; 2) that the tone of his letter is "so bold and frank" as to appear that he answered the ad only because he thought obliged to do so; and 3) that Manston has only worked as a "city architect" and is lacking the experience



needed for the position (114). Furthermore, Nyttleton implies that Aldclyffe bases her decision upon Manston's appearance, admitting "[her] opinion . . . is worth more than [his]" (114). In short, Nyttleton states he "wouldn't run the risk of placing the management" of one of his estates "in his [Manston's] hands on any account whatever" (114). Here Hardy implies that a logical verdict should be forthcoming; Nyttleton argues so clear a case that a completely informed and dispassionate decision based upon the *facts as presented* would preclude Aldclyffe from hiring Manston, the less suitable candidate for her vacant position. Again, Intellect has dismissed Passion's role in making decisions.

In making an accurate assessment of Manston from his reply to the advertisement, Nyttleton provides Miss Aldclyffe with sound legal advice; it is Aldclyffe's free will to accept or reject his advice, thereby selecting the outcome. She chooses Manston to secure his future through a marriage with Cytherea, the daughter of her lost love. Nevertheless, Hardy takes this opportunity to explore once again the location of control—the Intellect—as he demonstrates a person's inevitable encounter with the legal system and its capacity, or lack thereof, to influence that individual's judgment. Hardy returns to his 1863 belief that the Intellect should act as the adviser to both the Passion and the Will within an individual (an internal locus of control). This focus explains why in 1871 he devotes such extensive text to Nyttleton's chastisement of Miss Aldclyffe's selection of Manston as her Land Steward. At this point, Hardy clearly separates the Intellect, Passion, and Will, now placing the Intellect in an external position that exerts little influence over an individual's internal Passion and Will. The

characterization of Solicitor Nyttleton serves as the external Intellect seeking to mitigate Aldclyffe's internal Passion (the attraction to Manston that Tayling, Nyttleton's partner, notices) but which cannot compel Aldclyffe's internal Will in her choice. For Hardy, just as an individual's Intellect attempts to exert an external influence over another individual's Passion and Will, so, too, the Law becomes society's explicit external controller, attempting to determine the fates of individuals.

Ignoring the wise external Intellect, Aldclyffe relies upon her internal Passion and Will; her decision to select Manston ultimately results in additional plot twists and legal entanglements for the other main characters. Aldclyffe's choice, though it does not cause a catastrophe by applying or adhering to specific civil or criminal laws, illustrates Hardy's early belief in the legal system, his external Intellect, as an influence upon individuals and, ultimately, upon society, for good or ill. Hardy has replaced the individual's internal Intellect with the external Intellect of the solicitor, and he ultimately replaces the representative of the Law with the corpus of the Law, an external control of individual and social Passion and Will but with more definable influence.

Hardy uses another pivotal complication, the burning of the inn under the control of Edward Springrove's father, to focus on two situations: 1) an explanation for the death of Manston's first wife, and 2) an opportunity for Manston's blackmailing of Edward Springrove to remove him as a rival for Cytherea's hand. Under the County and Borough Police Act of 1856, counties formed "police forces" to emphasize solving crimes rather than simply preventing

them (Bloy). This Act figures prominently because Hardy returns to the question of Mrs. Manston's death throughout the rest of the novel, hinting at murder. He introduces the police as well as a detective (both external Intellects) who search for a witness (*DR* 286), find a collaborator (375), and ultimately hold Manston for murder (385). While investigating criminal activity and solving crimes would seem to be a regular part of business for a police force and a detective, this activity represents one more way Hardy demonstrates the legal system's pervasiveness in individual's lives.

The fire at the inn also provides the means for Manston to gain control over Edward Springrove. Hardy considers Manston's blackmailing of Edward Springrove so important to the plot that he provides the reader with the full text of the lifehold contract Manston uses for his scheme, including the principal part:

And also shall, and at all times during said term, well and sufficiently repair, and *keep the said Cottage or Dwelling-house and all other the premises, and all houses or buildings erected or to be erected thereupon, in good and proper repair in every respect without exception:* and the said premises in such good repair, upon the determination of this demise, shall yield up unto the said Gerald Fellcourt Aldclyffe, his heirs and assigns. (emphasis added; *DR* 191)

Manston, and later Aldclyffe, uses the legalities of the lifehold contract to force Edward either to forego his pursuit of Cytherea or to watch his father suffer financial ruin to rebuild the cottages. Here Manston acts as the

external Intellect and Edward Springrove as the Passion. Hoping to maintain his happiness with Cytherea and yet not wanting to watch his father suffer devastating financial losses, Edward Springrove suffers under the influence of two Passions. Trying to discover an external solution to this struggle, he asks his father whether or not the buildings were insured. When his father indicates the fire office insuring them “[had given] up insuring them altogether, . . . on account . . . of the uncertainty and greatness of the risk of thatch undetached” and that he had intended to find another fire office but had not done so at the time of the fire (190).

Edward recognizes no simple resolution of his dilemma exists. Under the contract’s terms, his father is legally obligated to rebuild all of the cottages at his own expense. Realizing the moral and legal dilemmas in which both he and his father are caught, Edward Springrove has no moral choice but to forego his suit for Cytherea, sacrificing his happiness for the welfare of his father. Farmer Springrove’s lack of action (finding insurance for the buildings) coupled with the lifehold contract’s specific terms (which Farmer Springrove does not “particularly” remember) again demonstrate Hardy’s belief that an individual must make informed decisions and then act upon them in order to protect him or herself from harm. Since Manston has access to the knowledge of the contract’s terms, he acts to suit his will. Through his knowledge of the contract’s terms, Manston’s Intellect deprives Edward Springrove’s Passion of its desire: Cytherea Graye. Likewise, by using a common tenancy contract,

Hardy demonstrates that the external Intellect, the Law, has exerted its influence yet again by dictating choices: the choice of allowing suffering to come to a loved one or to one's self. The law then, as Hardy represents it at this point in his career, chooses no sides; it exists for the use of those with access to knowledge of it and who choose to act upon that knowledge. In this manner, it can, and often does, exercise control over others' lives.

Hardy blends the struggle between the Passion and the Intellect with his interest in capital punishment within this novel as he returns to his hanging image near the conclusion of the text. By having Manston choose to hang himself after confessing to his first wife's murder (*DR* 394), Hardy avoids the necessity of an execution. Guilty of murdering his wife, Manston would have stood trial, been convicted, and, as the action in the novel concludes in 1867, finally would have been condemned to hang in a public execution. Private executions within the walls of the jail did not occur until May 29, 1868 (Cooper 170). Aware of the gruesome details surrounding the hangings he witnessed as a young man, Hardy chooses to deprive the law of exacting its justice through Manston's suicide; nevertheless, Hardy integrates a near-image (hanging suicide) to remind the reader of the ultimate power of this external Intellect—the law. Hardy's investigation into the struggle between the Passion and the Intellect and his attendant use of the hangings continues in his novel, *A Pair of Blue Eyes*.

In *A Pair of Blue Eyes* (1873), Hardy explores the struggle among the Will, the Passion, and the Intellect as he portrays the love triangle of a young woman

(Elfride Swancourt) torn between her love for a man beneath her class (Stephen Smith) and her love for a man (Henry Knight, a barrister) who cannot accept her imperfections. Hardy's use of the hanging motif makes a metaphorical appearance in the novel when he combines his concept of moral reasoning with his fascination with hangings. In this novel Hardy portrays Elfride Swancourt as Passion and Henry Knight, her second suitor, as Intellect. In a key scene, Hardy reveals Swancourt and Knight (Passion and Intellect) walking along an embankment at the edge of a cliff as the wind blows Knight's hat off his head. As Knight pursues the hat over the embankment, he slips upon the "moistened film" on the "shaly surface of the incline" (*PBE* 207) and appears destined to drop to his death. Here Hardy symbolically reveals Intellect succumbing to Passion through Knight's illogical desire to chase a hat over the sloping edge of a precipice.

Hardy next allows Elfride, frantic for Knight's safety, to follow him over the edge so she can assist him up the slippery slope of the embankment. As she does so, she slips and imperils both their lives (*PBE* 207) until Knight locates a "piece of quartz . . . on the nose of the cliff" on which he can rest his feet (210). Her impulsive actions characteristically reflect Passion and only complicate Knight's dire situation; however, his actions to save her life reflect Intellect as he logically suggests she climb over him and boost herself to the top of the cliff (210). When she does so, the "force" from her leap over Knight pushes him "downward" and "[adds] to his [Knight's] own weight" (211). This motion proves too much "for the block of quartz upon which his feet depended," and he slips

further down toward the edge of the cliff until he finds a fingerhold by which he can support his weight (211). Now Intellect's (Knight's) survival depends upon Passion (Elfride), and in the remainder of the scene, Hardy permits Passion to save Intellect from death.

Hardy's play with Passion and Intellect continues as Passion (Elfride), disregarding the falling rain, disrobes, tears her garments into strips, and fashions a rope with which to pull Intellect (Knight) to safety (*PBE* 218-9). As she creates the knots in the rope (perhaps an allusion to the hangman's knot), Intellect (Knight) logically suggests Passion (Elfride) "[test] the strength of the knots" lest one of them slip under his weight. Elfride complies with Knight's suggestion, finds one of the knots loose, and admits to him that "it [the rope] would have broken but for [his] [Knight's] forethought" (219). Hardy here shows Passion bending to Intellect's logic, but a little further down the page Passion reasserts its dominance when Elfride decides to tie the rope "round her waist and . . . lean directly upon the bank," an "arrangement [Knight] had thought of, but would not suggest" because it imperiled her life (219). Because Elfride suggests the dangerous yet successful method of rescuing Knight, Passion (Elfride) saves Intellect (Knight). Through this figurative interplay between Passion and Intellect, Hardy suggests what he comes to profess more fully in his later novels: that Intellect must be tempered with *com*-Passion, that reason must learn when and how to blend with emotion, in order to remain effective and equitable.

Hardy's struggle between Passion and Intellect continues as he expands the Swancourt—Smith—Knight triangle. This love triangle, which resurfaces in a

more mature manner in Hardy's later novel, *Tess of the D'urbervilles*, creates the framework for the legal conflict in *A Pair of Blue Eyes*. This conflict occurs primarily because a clandestine marriage does not occur and because Henry Knight refuses to accept Elfride Swancourt's explanation of the event. The pivotal scene opens as Elfride confesses to her betrothed, Henry Knight, about her aborted secret marriage with Stephen Smith. Hardy spends the better part of two pages (*PBE* 333-335) relating Knight's attempt to learn the truth from Elfride in a manner reminiscent of the courtroom examination of a witness.

Hardy's source for this early knowledge of court procedure and examination techniques probably resides in his friendship with Horace Moule, who had been admitted to the Middle Temple of Temple Bar in November 1862 (Gittings 65). Another possibility for Hardy's early knowledge rests in one of Hardy's literary notebooks that reveals transcriptions of depositions and courtroom testimony (*LN* 3 49, 71-4, 97-105, 120-31); these transcripts reflect Hardy's keen interest in courtroom procedures as well as in the verdicts returned. Unfortunately, the details of the notebook's formation are uncertain, for as Davis admits, although most of "Hardy's legal notes [were] written down in the 1880s—when his responsibilities as magistrate began and his career as a novelist was at a high point" (27). Davis, however, does not preclude the possibility of an earlier inception; in fact, the notebook itself indicates no specific beginning date. Dates on the material included in the notebook range from the 1790s through the 1800s and into the early 1900s. While Davis' observation about Hardy's beginning the notebook in the 1880s has merit, an earlier beginning to Hardy's legal research



would account for his remarkable ability to mimic the questioning pattern of a prosecutor.

Though the reader expects Knight, a barrister, to question his betrothed about the erratic behavior that had been troubling him of late, the coldness of his queries and their meticulous, logical progression demonstrate he is more a calculating barrister than a concerned lover at this point. Following courtroom procedure, Knight, as he begins interrogating Elfride, introduces two pieces of evidence in the forms of the note and a letter to establish his case's validity. Elfride had previously written this note to Mrs. Jethway, a witness to Elfride's leaving and returning home one night in Stephen Smith's company (*PBE* 333, 331). As Knight confronts Elfride with her note, as well as Mrs. Jethway's letter to him cautioning him about Elfride's adventure, he slips into his professional demeanor quite easily:

*"Elfride, did you run away with a man you loved?—that was the damnable statement. Has such an accusation life in it—really, truly, Elfride?"*

*"Yes," she whispered.*

*"To be married to him?"*

*"Yes. O, forgive me! I had never seen you, Harry."*

*"To London?"*

*"Yes; but I—"*

*"Answer my questions; say nothing else, Elfride. Did you ever deliberately try to marry him in secret?"*

"No; not deliberately."

*"But did you do it?"*

"Yes."

*"And after that—did you—write to him as your husband; and did he address you as his wife?"*

"Listen, listen! It was—"

*"Do answer me; only answer me!"*

"Then, yes, we did." (334) (dialogue only; emphasis added to Knight's questions)

As Knight badgers his witness ("Answer my questions; say nothing else, Elfride"), he has become the consummate prosecuting attorney, carefully framing his questions bit by bit, logically proceeding from point to point. When he refuses to acknowledge any objections that might influence his ruling in her conduct ("Listen, listen! It was—"), he has become the judge as well. By using courtroom-like dialogue, Hardy demonstrates the external Intellect, the Law, confronting and defeating the heroine of the novel. Although Knight claims to be seeking the truth, what he actually seeks is the perfection of the image he believed to be Elfride. When faced with the evidence he, as judge, admitted into his own court, Knight cannot accept the reality and flaws of his betrothed.

Hardy continues the courtroom image as the narrator states "that men who will at first not allow the verdict of perfection they pronounce upon their sweethearts or wives to be disturbed by God's own testimony to

the contrary, will, once suspecting their purity, *morally hang* them upon evidence they would be ashamed to admit in judging a dog” (emphasis added; *PBE* 335). With the words “morally hang,” Hardy raises the specter of a moral gallows for those women who fall short of society’s expectations. Here Hardy extends the external Intellect to society and its expectations, imbuing it with the power of judge, jury, and executioner, an analogy he returns to in his later works.

By this point in the scene, Barrister Knight has almost completed his examination; with his final two questions to Elfride, “Were you alone with him?” and “Did you return on the same day on which you left?” (*PBE* 335), Knight procures the confession from her lips that leads to his verdict: “You must forget me. . . . We shall not marry, Elfride” (335). With these words Hardy deals the figurative death-blow, the “fatal bolt” (335), to whatever happiness Knight and Elfride may have been able to sustain. With this verdict, Knight attempts to remove himself from the love triangle, but to no avail. Ironically, the Swancourt-Smith-Knight triangle becomes moot shortly after this scene. Elfride, accepting Knight’s verdict that the two of them will not wed, marries another and soon dies. Hardy creates one last vision of the triangle as he unites Smith and Knight over Elfride’s coffin. Knight’s verdict, his law, becomes a death sentence figuratively for his future with Elfride and literally for Elfride herself. Hardy again employs the stock love-triangle device in his next novel, *Far From the Madding*

*Crowd*, to examine the ongoing struggle between the Passion and the Intellect as well as the law's power within that struggle.

In *Far From the Madding Crowd* (1874), Hardy uses overlapping love-triangles created when a young independent woman (Bathsheba Everdene) becomes the object of affection for three men: Gabriel Oak, Sergeant Frank Troy, and Farmer Boldwood. While Hardy uses fewer specific legal complications in this novel, he interweaves the law's intrusiveness into his characters' lives as he focuses on the continual struggle between the Passion and the Intellect. Heretofore the works examined have shown complex legal entanglements when building a home, providing for survivors after death, and choosing a spouse. Hardy now chooses breach of promise as the legal entanglement most suited for illustrating the conflict between the Passion and the Intellect. Although the thrust of Davis' recent work focuses on laws surrounding marriage (47), he does not consider the all-too-common complication to marriage—breach of promise. Examining the breach of promise Bathsheba Everdene perpetrates and the legal consequences ensuing from it, Hardy again depicts the law's relationship to individuals and how his concept of moral reasoning comments upon the law's application.

Hardy uses a stock narrative convention for his overt plot in *Far From the Madding Crowd* concerning Bathsheba Everdene and her initial suitor, Gabriel Oak: girl meets boy, boy offers marriage, she refuses, entertains other offers of marriage, suffers horribly for her choices, and ultimately accepts her first suitor, achieving the "happy ending" readers desired. By examining this stock

convention in relation to Ginger Frost's contention in *Promises Broken: Courtship, Class, and Gender in Victorian England* about Victorian writers' use of breach of promise in their novels, one sees how Hardy crystallizes his reason for reducing the number of legal entanglements in the text.<sup>6</sup> Referencing both period publications and modern scholars Deborah Gorham and Sally Mitchell, Frost contends that many Victorian writers used humor and common sense when dealing with a broken engagement by 1) "portraying the jilter as a thoughtless female, rather than a male," 2) "having the jilter go insane (and thus confirming that the ex-fiancée had had a narrow escape)," or 3) "insisting the breach led to the ultimate happiness of both parties" (8). A point-by-point application of this assertion to *Far From the Madding Crowd* reveals that Hardy uses all three conventions with respect to the relationship between Bathsheba Everdene and Farmer Boldwood.

Hardy begins his portrayal of Bathsheba as a "thoughtless female" (Frost 8) from the beginning of the novel when he has her "survey herself attentively" as she is perched on top of her belongings in the wagon (*FMC* 9). Even the narrator comments on the lack of any reason (Intellect) for her action (10), revealing her Passion's dominance, guiding her Will more than does her Intellect. Through the simple act of looking in a mirror, Bathsheba becomes a character with whom readers can sympathize and identify; consequently, readers overlook or forgive her moment of vanity. Hardy, however, extends this characterization of Bathsheba as unrestrained Passion to actions beyond simple human nature. Without

considering the consequences of her actions, she sends a valentine to Farmer Boldwood bearing the seal “Marry Me” on the outside (79). Even the decision as to whom to send it is done with little thought—little use of her Intellect: Liddy, her lady’s maid, suggests it would be “fun” to send it to Boldwood; Bathsheba agrees, then reneges, and finally decides the recipient with a toss of a hymn book (because it would be wrong to “toss money on a Sunday” (79). What begins as sport for Bathsheba, an outgrowth of her Passion, ends in tragedy for Boldwood, a victim of his Passion. Another example of Bathsheba’s acting as a “thoughtless female” (Frost 8) occurs when she enters into her relationship with Sergeant Troy. Once again the narrator provides analysis when he states, “Her culpability lay in her making no attempt to control feeling by subtle and careful inquiry into consequences. She could show others the steep and thorny way, but ‘reck’d not her own rede’” (*FMC* 147). In other words, Hardy reveals her guilt lay in her overpowering Passion, not in her Intellect. Bathsheba’s love for Troy has blinded her to all possibilities and has completely subsumed her intelligence. Hardy confirms this contention when Bathsheba decides to break her relationship with Troy. Again the narrator’s voice interprets her actions as thoughtless: “Was Bathsheba altogether blind to the obvious fact that the support of a lover’s arms is not of a kind best calculated to assist a resolve to renounce him?” (167). With this comment, readers accept that Hardy portrays Bathsheba as a woman

who has allowed her Passion to dominate her Will and Intellect, as the “thoughtless female” (Frost 8) who jilts Farmer Boldwood.

The next demonstration of humor and/or common sense Victorian authors use when dealing with breach of promise—“having the jilter go insane” (Frost 8) (thus confirming that the ex-fiancée had had a narrow escape)—occurs with Farmer Boldwood’s reaction to Bathsheba’s refusal to marry him. Although Hardy casts Boldwood as the “jilted” instead of the “jilter,” his madness, nevertheless, affects the readers’ impression of the relationship. Boldwood, at first unconscious of Bathsheba’s presence, loses himself in madness, in his Passion, for want of her. Though he has not yet even proposed to Bathsheba, Boldwood becomes extremely jealous of the attention she pays another young farmer at the Casterbridge market (*FMC* 94). Once again, the narrator’s voice confirms the reader’s analysis of Boldwood as a man who, “his equilibrium disturbed, . . . was in extremity at once. If an emotion possessed him, it ruled him. . . .He was always hit mortally, or he was missed” (95). Hardy’s commentary about Boldwood’s complete submission appears clear; Boldwood suppresses his Intellect to his Passion, to the exclusion of all else. Bathsheba’s valentine had struck its mark. Boldwood proposes to her at the sheep-washing pool, and though she does not accept, she does not reject his proposal, agreeing to let him “speak to her again on the subject” (100-2). This ambiguous answer permits Boldwood’s obsession with Bathsheba to continue. Boldwood appears again at the shearing-supper, where

Bathsheba tells him that, “at the end of five or six weeks, . . . [she] shall be able to promise to be [his] wife” (125). Before the end of that time, however, Sergeant Troy has captured Bathsheba’s heart and vow in marriage (181), leaving Boldwood jilted.

Bathsheba’s Passion controls her as completely as Boldwood’s masters him, manifesting itself in his madness. This madness of the jilted lover appears when Boldwood continues to fixate upon Bathsheba after Troy has apparently drowned (*FMC* 254-5). Again we hear the narrator’s warning about Boldwood “whose *unreasoning* devotion to Bathsheba could only be characterized as a fond *madness*” (emphasis added) (254). Boldwood presses her into saying she “will never marry another man whilst [he wishes her] to be [his] wife,” and she agrees to give him her promise at Christmas (271). When Troy, a year after supposedly drowning, reappears to reclaim his wife at Boldwood’s Christmas party, Boldwood’s psyche can take no more, and he kills Troy (289). Boldwood’s madness becomes more apparent when the reader learns he has been purchasing gifts for Bathsheba, each packaged and labeled with her name and the date to be given—six years from the Christmas party (294). Hardy conveniently provides Boldwood with a cause for leniency from the Crown by having Boldwood’s consuming Passion drive him to the desperate act of murder, a defense that Hardy later withholds from his most famous heroine, Tess.



Boldwood's murder of Troy affords Hardy the opportunity to employ his hanging image—or rather in this case, an image of a near hanging. As Hardy moves from Troy's murder to the outcome of Boldwood's trial, his sage character Joseph Poorgrass tells his fellow townfolk that "Justice is come to weigh [Boldwood] in the balance," (*FMC* 294) an allusion to Daniel 5:27 that Hardy employs in one of his later short stories to good effect. Justice will demand payment for the murder of Frank Troy, and even Boldwood's madness (*Passion without Intellect*) may not save him from the gallows. Although Boldwood "[pleads] guilty, . . . and [is] sentenced to death, [the] conviction that [he] had not been *morally* responsible for his later acts now [becomes] general" (emphasis added) (295). Hardy's narrator reveals that a "petition was addressed to the Home Secretary, advancing the circumstances which appeared to justify a request for a reconsideration of the sentence" (295), a common occurrence, as V. A. C. Gatrell discovered while researching material for his text *The Hanging Tree*. Uncovering the inequities and injustices of capital punishment as revealed in thousands of the petitions for leniency he discovered, Gatrell describes the tragedies contained in them as "Hardyesque" (*Hanging Tree* v-vi).

While Bathsheba, Oak, and the town wait to learn the outcome of Boldwood's petition for leniency, Oak visits Boldwood in jail. While walking home, Oak hears "a hammering, and [lifting] his bowed head . . . he could see the upper part of the gaol entrance, . . . and some figures

were there . . . carpenters lifting a post into a vertical position within the parapet" (*FMC* 295). Hardy prepares the reader for an execution, but he has set the events deliberately between the years 1869-1873 (Weber 182), a time after public executions had ceased (Cooper 174). Hardy does not have to describe the actual proceedings. He leaves the reader in suspense as to whether the Crown will grant Boldwood's petition for leniency for a short while longer to demonstrate how the petition's acceptance or rejection will affect Bathsheba; Liddy remarks that she hopes Boldwood's life "will be spared" but "if it is not, she [Bathsheba will] go out of her mind too" (*FMC* 296). Bathsheba has succumbed to her Passion and only Gabriel Oak's balance of Passion, Intellect, and Will can help her. At last Hardy reveals the outcome of the petition for leniency: Boldwood is to receive "confinement during Her Majesty's pleasure" instead of death "(296). The clemency Boldwood receives affirms Hardy's defense strategy; Boldwood's madness has proven a successful mitigating circumstance in reducing his sentence and saving his life. In this manner, Hardy has demonstrated Frost's second view of the ways many Victorian authors deal with broken engagements.

If Boldwood is the true jilted lover of the novel, then Hardy only partially fulfills Frost's third condition of "insisting the breach led to the ultimate happiness of both parties" (8). If, however, Hardy intends to portray Oak as Bathsheba's initial jilted lover since he proposed to and was rejected by her first (*FMC* 27-29), then by having Bathsheba marry him at the end of the novel (304-8), Hardy fulfills

the conditions Frost proposed. Bathsheba has no need for a remedy from the legal system. She has not endured a long engagement. She has suffered no financial or social loss because of the breach of promise (although a case could be made that Boldwood does). She has not compromised her chastity; she and Troy were legally married. By meeting these conditions with Bathsheba, the novel's heroine, Hardy heightens the tragedy of Fanny Robin's case for breach of promise against Troy. Fanny sacrifices her virginity, her employment on Bathsheba's farm, and ultimately both her life and that of her unborn child on Troy's promise of marriage. With this realistic view of breach of promise, Hardy presents a serious subtext within the plot as a counterpoint to his humorous portrayal of Bathsheba's perpetration of breach of promise. By using breach of promise, a circumstance for which a legal remedy existed, Hardy reveals how Passion may mitigate the inequities of the British legal system, his external Intellect.

As he moves into the middle phase of his prose career, Hardy extends his investigation into the struggle between the Passion and the Intellect by building upon concepts he has introduced during this early period. His prose from these years includes laws relating to contracts, inheritance, marriage, blackmail, bigamy, and murder. While acquiring his skill as an author, Hardy overtly incorporates these laws and their ensuing consequences into his novels as he demonstrates his concept of moral reasoning. In these early works, Hardy thinly disguises the struggle between the Passion and the Intellect as complexities arising from various legal snares he has created for his characters. Although two

of these legal snares involve murder, a crime punishable by hanging, Hardy avoids depicting an execution within his early prose works. Hardy's aversion to recreating the hangings he witnessed in his youth appear as a subtle protest against capital punishment, leading Hardy to find other ways to punish his characters for their crimes. As he matures and moves into the next stage of his prose career, Hardy begins to wrestle with his own attitude toward capital punishment as well as the "moral right of a community to inflict it" (*Life* 341).

## CHAPTER THREE

### THE TRIAL:

#### DIRECT EXAMINATION <sup>7</sup>

Hardy's earlier prose has illustrated that society, in administering justice, possesses an Intellect and a Will but lacks Passion, and Hardy's legal dilemmas reflect society's expectations that the law, the Intellect, act for its well-being, not necessarily for an individual's well-being. Additionally, Hardy's near-images of hangings belie the intense trauma he suffered when he witnessed two public executions. In his earlier works, perhaps without even realizing it, he has begun his quiet advocacy for the abolition of capital punishment continues into his middle prose. As Hardy moves more fully into the role of author, he recognizes his need to study and learn his craft. To implement his plan, Hardy writes to George Smith in March 1876, following the publication of *The Hand of Elthelberta*, requesting that Smith "[issue] . . . a cheap edition of both *Far From the Madding Crowd* or of a pair [sic] of *Blue Eyes*" because Hardy does "not wish to attempt any more original writing of any length for a few months, until [he] can learn the best line to take for the future" (CL 1:43). This deliberate hiatus lasts approximately one year because, in February 1877, Hardy writes to John

Blackwood offering a manuscript he had recently begun, “dealing with remote country life . . . though [he had] not yet written enough to be worth sending” (1:47).

When he returns to writing in 1877 through 1888, the central and probably most prolific years of his prose career, Hardy produces six novels, at least ten short stories, and seven essays on either literary or personal views, including “The Profitable Reading of Fiction” and “The Dorsetshire Labourer.” His novels, in chronological order, include *The Return of the Native* (1878), *The Trumpet Major* (1880), *A Laodicean* (1881), *Two on a Tower* (1882), *The Mayor of Casterbridge* (1886), and *The Woodlanders* (1887). Having taken the time to work on his style, Hardy now uses his novels to strengthen his methods of characterization and setting, with the law relegated to the background. Meanwhile Hardy chooses the short story to continue his direct commentary on the relationship between his concept of moral reasoning and the law, especially how the Passion, Will, and internal Intellect of his characters interact with society’s external Intellect, the law. As Hardy investigates this inter-relatedness of moral reasoning and the law, he weaves into this relationship his growing disdain for capital punishment, a remnant from his witnessing the hangings as a young man.

By shifting his more obvious legal entanglements into his short stories, Hardy permits the reader to experience more sharply the law’s effects on his characters’ lives, thus allowing the reader to recognize the law’s injustices, especially toward women, a strategy that he could carry into his later works.

Hardy's short stories written during this period include "The Thieves Who Couldn't Stop Sneezing" (1877), "The Duchess of Hamptonshire" (1877), "An Indiscretion in the Life of an Heiress" (1878), "The Distracted Preacher" (1879), "Fellow Townsmen" (1880), "What the Shepherd Saw" (1881), "The Honorable Laura" (1881), "A Tradition of Eighteen Hundred and Four" (1882), "The Three Strangers" (1883), "The Romantic Adventures of a Milkmaid" (1883), "Our Exploits at West Poley" (1883), "Interlopers at the Knap" (1884), "A Tryst at an Ancient Earthwork" (1885), "A Mere Interlude" (1885), "The Waiting Supper" (1887), "Alicia's Diary" (1887), and "The Withered Arm" (1888). Even though Hardy produces a significant number of works during this period, in this chapter I treat only four—two short stories that employ examples of capital punishment: "The Three Strangers" and "The Withered Arm," and the novels *The Mayor of Casterbridge* and *The Woodlanders*. In these works, Hardy examines his concept of moral reasoning, using the law either as a focal point for the plot or as a consequence of some character's actions. Additionally, each of these works contains an image or near-image of the two hangings he witnessed as a young man, reflecting the significance of those events in developing his sense of moral outrage at the Victorian legal system, which he suggests operates strictly upon Intellect without *com-Passion*.<sup>1</sup> Near the end of this segment of his prose career, Hardy writes the quotation that begins this study: "If Law itself had consciousness, how the aspect of its creatures would terrify it, fill it with remorse!" (*Life* 153), showing a firmer conviction that, if the legal system is to be

effective and humane, it must not operate strictly on Intellect but must exercise *com*-Passion to achieve balance through moral harmony.

As Hardy explores his concept of moral reasoning and his emerging disdain for capital punishment, the hanging image or near-image that he manipulates throughout his works becomes more organic to his plots. For example, Hardy deliberately satirizes the gruesome cruelty of the hangings he witnessed in his short story, "The Three Strangers," a tale about an unexpected and anonymous meeting at a baptismal party of the visiting hangman, the escaped prisoner, and the prisoner's brother. Although the hangings Hardy witnessed had executed criminals guilty of murder, lesser crimes had once carried the death penalty as well. But by 1883, when Hardy writes this story, almost fifty years have passed since Parliament abolished capital punishment for such offenses as "coining, horse-stealing, cattle-stealing, and sheep-stealing, stealing letters from the Post Office, sacrilege, and rick-burning" (Cooper 42). Nevertheless, Hardy chooses the "night of the twenty-eighth of March 182—" (*WT* 10), during the years when public hangings still served as penalties for lesser crimes, as the setting for his tale of a man who has been convicted of sheep-stealing and condemned to die. As part of his satire of capital punishment, Hardy creates a joyful celebration at the baptism and christening of a new child (10), a family's celebration of life, to wryly criticize the hanging-fairs that commonly accompanied public executions, Victorian society's celebration of death.



As family and friends of Shepherd Fennel and his wife gather to commemorate the baptism and christening, the three strangers arrive separately; Hardy introduces the first of his strangers, who arrives shortly before the second. When Shepherd Fennel asks about the occupations of the two strangers who now attend his celebration, the first admits to being a “wheelwright” (WT 20), but the second “[answers] his question rhythmically” (21). As the second stranger begins his answer in song, he indicates that his “trade is a sight to see” and his “customers [he ties] and [takes] them up on high/ And [wafts] ‘em to a far countree” (20). The merry-makers within the cottage “[are as] perplexed at the obscure revelation as the guests at Belshazzar’s feast, except the man in the chimney-corner who quietly said, ‘Second verse, stranger,’ and smoked on” (21). By alluding to Belshazzar’s feast, Hardy refers to the writing that appeared on the wall, “*Mene, Mene, Tekel, and Parsin*” that translates as “*Mene*: God has *measured* your sovereignty and put an end to it; *Tekel*: you have been *weighed* in the balance and found wanting; *Parsin*: your kingdom has been *divided* and given to the Medes and the *Persians*” (original emphasis; *The Jerusalem Bible* Dan. 5:25-28). This allusion, apropos to Hardy’s purpose of judicial satire, immediately elicits a connection to the judicial process: a trial has been held, a verdict entered, and sentence pronounced.

Hardy sees the phrase “measured your sovereignty” in Daniel’s prophecy as the trial of the Law’s power over the lives of people struggling to survive; the condemned man had stolen the sheep to prevent his family’s starvation (WT 21). Likewise, the phrase “you have been weighed . . . and found wanting” symbolizes

the verdict upon the masses who assemble in rented rooms level with the scaffold and those on the ground beneath it (Cooper 1-26) to witness the supreme power of the Law's application. Thus, Hardy convicts the revelers at the baptism and christening. For Hardy, they represent the hoards of citizens who gathered outside the jail gates before a hanging in order to obtain a good view (Cooper 1-26); he convicts them of morbid blood-lust, a crime he himself had committed when he witnessed the hanging of Martha Browne (Gittings 32-33). The "divided" kingdom then, for Hardy, represents the two sides involved in the debate about capital punishment, possibly leading to its eventual abolishment, as Members of Parliament argued the entire question of executions. The debate over capital punishment's future in English jurisprudence intensified from 1862-67 (Cooper 123-47) as members of Parliament argued over whether to abolish capital punishment completely or simply to abandon public executions in favor of private ones. As the years of these debates overlap the time he worked in Blomfield's office near the Temple Bar (*Life* 40-56), Hardy could not have avoided reading or hearing arguments on both sides of the debate, absorbing the salient points to filter through his own moral reasoning at a later time. Without an understanding of the connection between the allusion and the hanging debates, Hardy's use of it appears to illustrate only tangentially the revelers' confusion. Nevertheless, through the allusion's power, Hardy's satire of the party becomes more apparent: the short story exposes Hardy's emerging disdain for and condemnation of capital punishment as a means of enforcing English law. Furthermore, by employing the allusion and tying it to his attitude

toward capital punishment, Hardy reveals subtlety and maturity, quite probably resulting from his study of style (*CL* 1:43).

Hardy's satirizes not only English public executions but also judicial representatives as he presents the three strangers within the context of the other characters at the gathering. Against a picture of amiable friendship, describing the "chief or living-room" where the festivities take place as being "as cosy [sic] and comfortable a nook as could be wished for," Hardy juxtaposes the "fire of thorns . . . that crackled 'like the laughter of the fool'" (*WT* 10) for a two-fold purpose: first to help the reader see the literal warmth of the surroundings, and second to introduce the idea of a loss of reason and personal intellect through the simile of the fool's laughter. As he lulls the reader with the warmth of the fire and the coziness of the room, Hardy begins his description of Shepherd Fennel and his guests. Hardy draws these characters empathetically by providing a name and some background for a few of them: "Charley-Jake, the hedge-carpenter," "Elijah New, the parish-clerk," and "Oliver Giles," a seventeen year-old young man who is "enamoured of his [dancing] partner, a fair girl of thirty-three years" (10-12). Therefore, when Hardy introduces the mysterious first stranger (whom he later reveals to be the convicted thief Timothy Summers), the reader accepts him into the festivities as easily as do the revelers (12-14). As Hardy brings the second stranger into the story, however, the narrator comments that "this individual was one of a type more radically different from the first," describing him as having hair "slightly frosted" and wearing a "suit of cinder-grey shade throughout" (16-17) and later referring to him as "the Prince of Darkness

himself" (23). As he develops the tale, Hardy's description of the second stranger as a Satan becomes all the more relevant to the role he plays. Martin Ray, whose work traces Hardy's deliberate revisions to his original manuscript, shows how the changes intensify Hardy's yoking of the hangman and Satan. He points to Hardy's "[alteration of] eight of the 'pepper-and-salt' descriptions to 'cinder-grey', [deleting] two more and [adding] a further four references . . . throughout the story" (9). By identifying the second stranger as the hangman, Victorian society's chosen executioner, and by associating him with Satan, Hardy expresses his bitter commentary on that society's laws; for Hardy, hanging a man for stealing a sheep in order to feed his starving family is too diabolical in a civilized society, too harsh a penalty for Timothy Summers to endure.

Hardy's use of the third stranger, the condemned man's brother, allows him to expose the ineptitude of the local constabulary and its strict adherence to "the letter of the law" (*The Jerusalem Bible* 2 Cor. 3.6), a phrase Hardy later employs as an epigram for his last novel, *Jude, the Obscure*. As the executioner sings his cryptic answer to reveal his occupation, the third stranger arrives, spies the two strangers, and becomes, for the merry-makers, "the picture of abject terror—his knees trembling, his hand shaking so violently that the door-latch . . . rattled audibly; . . . and his eyes fixed on the merry officer of justice in the middle of the room" (WT 22-3). Recognizing both the executioner and his brother, this latest stranger turns and flees from the cottage; moments later the retort of a gun breaks the air's silence, indicating the prisoner from the jail had escaped (23). With the sound of this shot, Hardy indicates Victorian Intellect's, the Law's, need

for help, moving his satire from a condemnation of capital punishment to an analysis of the battle between Intellect and Passion for control of society's Will.

As Hardy has yet to reveal the specific identities of each of the strangers, the revelers, as well as Hardy's readers, believe this third stranger to be the escaped prisoner. The hangman, after ascertaining the identity of the constable, demands he "pursue the criminal at once, with assistance, and bring him back." Though the constable readily agrees to pursue the criminal, he maintains he must "go home and get [his staff]" because he "can't do nothing without [his] staff . . . for there's the king's royal crown a painted on en" (24). The constable believes that when he strikes the prisoner with his staff "'tis made a lawful blow thereby" (24), admitting he needs this outward symbol of the law to provide him with the "courage" to apprehend the escapee (24). By including the constable's reliance upon his "staff" of office, Hardy depicts the legal system, at least in rural Wessex, as requiring the external Intellect of the law to empower its representatives to act.

After the executioner as "a king's man" himself authorizes the constable to act *without* his staff of office, the constable rallies the shepherds to assist him in apprehending the escaped prisoner, and they head across the "uneven country" surrounding Shepherd Fennel's cottage (WT 24-5). Following a long chase across the country, the constable and his deputies apprehend the third stranger, delivering him to the "two officers from Casterbridge gaol, and a well-known magistrate" who wait at the shepherd's cottage (26-8). Upon arriving at the cottage with the recaptured prisoner, the constable and the shepherds learn the

man they have in custody is not the escaped prisoner, but his brother (30). As the search resumes the next day, the narrator voices Hardy's opinion that although "the quest for the clever sheep stealer [became] keen," because "the intended punishment [Intellect] was cruelly disproportioned to the transgression, . . . the sympathy [Passion] of a great many of the country-folk in that district was strongly on the side of the fugitive" (insertions added) (*WT* 30), implying that the search may not have been as thorough as possible. Hardy demonstrates the country-folk's Passion overruling Victorian society's Intellect to illustrate his belief that society benefits most when the Intellect and Passion work together, when the Will acts humanely, *com*-Passionately. The community's less than thorough search allows Hardy to reveal the reason for their change of heart: "his [the prisoner's] marvellous coolness and daring in hob-and-nobbing with the hangman, under the unprecedented circumstances of the shepherd's party, *won their admiration*" (emphasis added) (30). These simple shepherds no longer view the stranger as an anonymous convicted criminal sentenced to death for sheep-stealing but as Timothy Summers, a desperate man who stole a sheep to feed his family—in short, they had gotten to know him. Timothy Summers no longer existed as an unknown person condemned to hang for his transgressions against the State but as a fellow human being who looked his executioner in the face, accompanying him in song. Hardy's rustics reveal what Victorian society failed to realize: each condemned prisoner belongs to humanity and that justice must be tempered with *com*-Passion.

In “The Withered Arm,” a young wife searches for a cure for a magical affliction caused by her husband’s former lover. Written in 1888 but set in approximately 1825, it contains similar plot elements to Hardy’s next published novel, *Tess of the d’Urbervilles*, the first half of which was sent off in 1889. Both deal with a young milkmaid, an illegitimate child, a former lover, and a hanging; however, the similarity ends there. The crux of the short story concerns a subtly implied breach of promise of marriage between Rhoda Brook, the milkmaid, and “well-to-do Farmer Lodge” (WT 61), reminiscent of Hardy’s use of breach of promise in *Far From the Madding Crowd*. Once again, Hardy integrates all the components of actual legal cases of breach of promise: 1) long engagements; 2) sexual intimacy often a factor (sometimes resulting in illegitimate children); and 3) jobs and schooling often abandoned (Frost 9). But now Hardy shows stylistic advances in his use of indirection, hints in dialogue, and shifts in setting to present his fictionalized case.

In “The Withered Arm,” Hardy presents the first component, an often-lengthy engagement, through the statements by Rhoda Brooks’ fellow milkmaids. Hardy hints at the breach of promise at the beginning of his tale when one of them “[glances] past her cow’s tail to the other side of the barton, where a thin fading woman of thirty milked *somewhat apart from the rest*” (emphasis added; WT 57) while others comment that “’tis hard for *she* [original emphasis]” and that Farmer Lodge “ha’n’t spoke [sic] to [her] for years” (58). With these comments, Hardy hints at a significant relationship that had existed between the two individuals named but that has not existed for some time. Because Brooks

remains apart while the others discuss how Lodge's new marriage will raise a source of discomfort for her, the reader may infer a romantic relationship existed between the two at some point in the past. Hardy subtly continues to build the case for breach of promise by reinforcing the dairyman's knowledge of their prior relationship as he "[knows] perfectly well the tall milkmaid's *history*" [emphasis added] (62). Additionally, Hardy refers to Rhoda Brooks as "the supplanted woman" (63) to clarify the current status of the relationship between Lodge and Brooks; by using "supplanted" to describe Brooks' current position, Hardy strengthens the reader's conception that a breach of promise has occurred in the past, informing the reader that at one time Rhoda Brooks occupied the same or a similar position with Farmer Lodge that his wife Gertrude now holds. The suggestion of a lengthy engagement, arrived at through inductive reasoning rather than direct statement, marks Hardy's more mature writing style as he leads the reader to the past link between Lodge and Brooks.

Between the employees' comments about the current relationship between Brooks and Lodge early in the narrative, Hardy introduces a second component often tied to breach of promise, sexual intimacy with a resulting illegitimate child (Frost 9), in this case "a boy of twelve or thereabout" who joins Rhoda on her walk home (*WT* 58). Within two paragraphs of this meeting, Brooks tells the young man of the arrival of Lodge's new bride, to which the young man replies, "Is father married, then?" (58). Hardy not only portrays the boy's knowledge of his father's identity but also reveals Lodge's knowledge of his son, to whom he shows indifference when he sees the young man staring at his



new bride. Hardy writes, "The farmer, though he seemed annoyed at the boy's persistent presence, did not order him to get out of the way" (WT 60). Brooks inquires of her son as to the farmer's reaction to his staring, to which the young man replies, "Just the same as usual," and Brooks responds, "Took no notice of you" (WT 61). The fact that Lodge ignores and distances himself from his son comes to haunt him later. Meanwhile Brooks learns she has been "slyly called a witch since her *fall*" (emphasis added) (66). Brooks' use of the term "fall" indicates that her sexual liaison with Lodge, with a resulting child, did not prevent him from casting her off for a younger woman or for bringing about her ruin in the eyes of society. Even after Farmer Lodge has remarried, the specter of the breach of promise remains because "she [Gertrude] had brought him no child, which rendered it likely he would be the last of a family who had occupied that valley for some two hundred years. *He thought of Rhoda Brook and her son; and feared this might be judgment from heaven upon him*" (emphasis added) (72-3). Farmer Lodge's mental commentary reveals guilt for his past treatment of Rhoda Brooks and his unconscionable amorality toward this breach of promise. Though Hardy provides the reader with no specific indication of a previous offer of marriage from Lodge to Brooks, a breach of promise, nevertheless, has occurred that has resulted in his only offspring.

Hardy introduces even more subtly a third element common to breach of promise, that of jobs and schooling often being abandoned (Frost 9), causing financial hardships for the rejected women. While Brooks remains employed as a dairy maid, Hardy depicts the cottage in which she and her son reside as being

“built of mud-walls, the surface of which had been washed by many rains into channels, and depressions that left none of the original flat face visible; while here and there in the thatch above a rafter showed like a bone protruding through the skin” (*WT* 58-9). Hardy’s implication is clear: Brooks and her son exist in the most meager way in spite of her employment at the dairy. The young man’s boots are “cracked” and will not “keep [his] feet dry if [it comes] on wet,” further revealing their destitute condition, yet he ironically tells Mrs. Lodge that he and his mother have “enough to keep [themselves]” (64). They have sufficient means to meet their minimal requirements, but a new pair of boots appears to be beyond their means. So, while Brooks has not abandoned her job (and Hardy never mentions schooling), she has paid a high financial price by raising her son without any assistance from his father, Farmer Lodge. Lodge, in fact, appears to have abandoned them completely as Brooks and her son reside at the outermost fringes of Lodge’s farm, and he has little or no interaction with them. By providing the reader with this suggestion of Brooks’ tenuous financial resources, Hardy appears to have met all three of Frost’s components for breach of promise. A breach of promise also explains the jealousy Brooks experiences toward Mrs. Lodge before they become acquainted. This unrestrained jealousy causes Brooks’ inadvertent cursing of Lodge’s new wife, motivating the conflicts within the remainder of the tale.

Having laid the foundation for Brooks’ motive for jealousy and the inadvertent curse, Hardy now presents the cure for Brooks’ curse on Mrs. Lodge within the context of a superstitious ritual that hinges upon the body of a newly

hanged man. Again, Hardy carefully sets the time period for the story, approximately 1825, so he can hang as the penalty for rick-burning, thus allowing him to comment on the inhumanity of capital punishment. To understand how Hardy incorporates the hanging into his tale requires a brief synopsis. The curse Brooks inadvertently inflicts upon Mrs. Lodge occurs one evening “two or three weeks after the bridal return” after Brooks “[sits] over the turf ashes . . . [contemplating] so intently [on Lodge’s] new wife . . . that she [forgets] the lapse of time” (*WT* 63). Hardy presents the reader with a description of a woman so exhausted from a hard day’s labor and so fixated upon Lodge’s new bride that a picture of the young woman appears to her “in her dreams” (63). Feeling herself being suffocated more than once by “the pressure of Mrs. Lodge’s person on her chest,” Brooks finally grabs the left wrist of the “confronting spectre . . . whirling it backward upon the floor” (63). Quite shaken, Brooks cannot return to sleep but believes the apparition to have been nothing more than a dream until her son questions her the next day about noises he heard the preceding night exactly when she had experienced the “vision” (64). She confirms her misgivings about the reality of the dream when she meets the new Mrs. Lodge (hereafter Gertrude). The new bride has “a little ailment which puzzles [her],” and Brooks observes “faint marks of a unhealthy color” on the “exact original of the limb she had beheld and seized in her dream” (64). As the story progresses, Gertrude’s arm becomes more afflicted, appearing to shrivel and wither (67). By interjecting the dream that apparently reflects reality, Hardy has provided the conflict for the next portions of the tale.

Hardy, having provided the reader with the cause of Gertrude's ailment, now permits her to discover its cause and a potential cure. Suffering more and more from the afflicted arm, Gertrude tries every medical remedy available with no success; the local folk ultimately suggest she consult "Conjuror Trendle," a local "exorcist" (*WT* 68-9). She asks Brooks about him, discovers that the locals consider him to have "powers other folks have not," and scoffs at the idea of consulting him, amazed that the locals could "be so superstitious as to recommend a man *of that sort!*" to her (emphasis added) (69). She arrogantly adds that she "thought they meant some *medical man*," and she "shall think no more of him" (emphasis added) (69). From her comments, Hardy reveals Gertrude's superiority and prejudice toward the rustics' beliefs, demonstrating a modicum of Intellect that overrules her Passionate nature. In this manner, Hardy reveals his motif of the moral struggle between the Passion and the Intellect for control of the Will. Eventually Gertrude's Intellect submits to her Passion; she asks Brooks to accompany her to Trendle's cottage and discovers, through the use of an egg white floating in a glass of water, the form of the enemy who inflicted the curse upon her arm (70-2). Having submitted her Intellect to the control of her Passion and Will, Gertrude appears more vulnerable to impression and insinuation; hence she appears "quite changed" after she emerges from the cottage (72). Shortly after the visit to Trendle's cottage, rumors begin to spread that Brooks has caused Gertrude's affliction, so Brooks and her son "[disappear] from the neighbourhood of Holmstoke" (72). Hardy removes the suspected perpetrator of the affliction from the immediate scene perhaps to concentrate on

Gertrude's emotional state but also to drive Brooks and her son further into abandonment.

Through his moral reasoning, Hardy brings a more desperate and determined nature into Gertrude, changing her from a person originally guided by Intellect to one controlled by superstition and obsessive Passion. The damage to her arm has marred her beauty, and consequently, Farmer Lodge is less enamored with her than he was previously (*WT* 73). Her Passion finally in almost total control of her actions, Gertrude again desperately seeks assistance from Conjuror Trendle; he advises her the only way to achieve a cure is to "touch with the limb the neck of a man who's been *hanged* . . . before he's cold—just after he's cut down" so as to "turn the blood and change the constitution" (emphasis added; 74-5). Shocked and unsure how to accomplish this task, Gertrude determines to ascertain when the next hanging will occur (76). Although an assize rarely passes in Casterbridge (the county seat) without a hanging (*WT* 75), Gertrude discovers she has missed "the time at which the sentences were to be carried out," and must wait "for another opportunity," a period of three months (76). By the end of June, she "wellnigh [longs] for the death of a fellow-creature" and finds herself "[unconsciously praying] . . . "O Lord, hang some guilty or innocent person soon!" (76). Her overriding Passion has led to her unholy prayer. The innocence or guilt of the individual matters little to her so long as through his death she may be made whole once again and win back her husband's affection. By using the cure from an old, common superstition related to him by his mother (Ray 35), Hardy now has the means of revisiting the

hanging incidents from his youth, even though he does so for a different purpose than in “The Three Strangers.” Here Hardy uses the hangings not to chastise the crowds that gather to watch the spectacle but to demonstrate the struggle between the Passion and the Intellect, how an overabundance of Passion (vanity and loneliness) overrules Gertrude’s Intellect and deadens her Will. Hardy equates Gertrude’s succumbing to her Passion with Victorian society’s subordinating its collective Intellect to its collective Passion for using capital punishment to deter crime (Cooper 35-6), thereby making an example of someone for the benefit of everyone.

In the next phase of the tale, Hardy places Gertrude at the hanging and begins his analysis of human reasoning. After learning that an execution has been scheduled during the July assizes, “only one, for arson” (*WT* 76), and determined to attempt the cure, Gertrude, through subterfuge, attends the execution at the Casterbridge fair (77-8). Accurately placing the hanging in conjunction with a local fair, Hardy demonstrates that public executions had become associated with festivals in small boroughs and county seats. Concerned that her husband would not approve of her actions, Gertrude decides to wait until after her attempt at the cure to tell him (76). She is relieved when he informs her he must be away from home for “another day or two on business at a fair, and that he [is] sorry he [can] not take her with him” (77). Although surprised at her willingness to remain at home, Lodge nevertheless accepts it and departs as scheduled for his business engagement. After he leaves, Gertrude methodically packs a “few articles of clothing,” provides her household staff with

a plausible reason for her absence that evening, and departs by a circuitous route for the Casterbridge fair (77-8). Ironically, her Intellect provides assistance to her Passion to help effect her journey to the execution.

Hardy's analysis of Gertrude's moral reasoning in this tale is almost complete. As she approaches Casterbridge, Gertrude observes "the entrance to the county jail," and on its roof she sees "specks . . . moving about . . . erecting something" (*WT* 79). Hardy clearly intends both Gertrude and the reader to understand that the workers are erecting the gallows on this prominent point. When she reaches the inn where she will stay overnight, Gertrude notices a "crowd of boys standing at the door of a harness-maker's shop just above the inn, looking inside it with a deep interest" and learns that the rope will be sold "by the inch afterwards" (79).<sup>9</sup> That profit could be made from a macabre event underscores the callous disregard with which individuals and society treated the victim. Hanging, then, becomes a business and a cause for celebration for all except those related to the victim. After learning of the grisly practice, Gertrude next inquires where the Casterbridge hangman resides and proceeds to call upon him to gain his assistance in her endeavors (*WT* 79-80). She makes her request, and, after viewing her arm and agreeing that it "is truly as suitable for the cure as any [he] ever saw" (81), he agrees to help her. When she tells him she wants to remain anonymous as she executes this plan, he suggests she wear a veil when she comes the next day, "no later than one o'clock" (82). The day of the execution arrives, and Gertrude, wearing a veil, flawlessly executes her plan for entering the jail. Her desire for anonymity once again shows her intellectual

arrogance; logically, the cure should not work. Yet Gertrude's Passion overrides her Intellect's doubts, and she enters the jail.

The moral reasoning of the crowd receives less of Hardy's attention than Gertrude's moral reasoning, for although Hardy describes a festive air on the day she arrives in Casterbridge, his description on the day of the execution appears more subdued. The hanging in this tale serves a different purpose for Hardy; rather than condemning the raucous atmosphere that accompanied public executions, Hardy turns his attention to the callous disregard individuals and society afford the condemned prisoner and any of his or her family members. Hardy uses Gertrude's self-interest as his vehicle for the commentary. As the hangman places her bare arm on the neck of the hanged man, Hardy reveals the identity of the young criminal through both her scream and that of the young man's mother, Rhoda Brooks (*WT* 83-4). Hardy merges the story of the two women by making the executed criminal the illegitimate son of Brooks and Lodge. Thus he focuses on the callousness of both Gertrude and of society, a major external Intellect, and points to the inhumanity of the justice applied. He highlights the event as inhumane and self-serving; none of society's representatives (Gertrude, the executioner, the crowd gathered to watch the hanging) have regard for the victim and his grieving parents. Likewise, Hardy reflects the callousness of humanity's Intellect, justice, as it has been applied (or misapplied) in this case: the young man, according to the hangman, "deserved to be let off" because he "only just turned eighteen, and [had been] only present by chance when the rick was fired," but "they [society] are obliged to make an



example of him, there having been so much destruction of property that way lately” (81). Neither Victorian society nor the Law (Hardy’s external Intellect) care that the case against Brooks’ son was circumstantial; all that matters is making an example of him as a deterrent to others, thereby reducing the “destruction of property” (81) in the area.

On more than one occasion, Hardy illustrates fictionally what factually happened in the history of public hangings.<sup>10</sup> For example, Joseph Harwood, for circumstances closely mirroring those of Brooks’ son, paid with his life for being seen with the gang that had committed highway robbery. Even though Harwood stated he had not been among those who had committed the violent acts, he unfortunately confessed to having taken “half a crown from Sheehan’s pockets after the attack” (Gattrell *Hanging Tree* 41). Hardy does not provide any confessional statements from Brooks’ son that would further implicate him; instead Hardy focuses on the injustice of the sentence by making the son almost non-existent. Hardy’s powerful message carries far more weight because he selects his details narrowly to bring forth his point of moral reasoning that justice is often blind to humanity. He continues to refine this method of social commentary in the two final novels of this period: *The Mayor of Casterbridge* and *The Woodlanders*.

Hardy’s interest in the fair application of justice and in moral reasoning plays a sub-textual role in his two final novels of this period, *The Mayor of Casterbridge* and *The Woodlanders*. In *The Mayor of Casterbridge* (1885), a tale Hardy describes in the Preface as “more particularly a study of one man’s deeds

and character" (*MC* 1), he presents a wife-sale to unfold Michael Henchard's battle with the Passion and the Intellect, his own as well as those of other characters. The wife-sale, a startling and melodramatic act, had its basis in history; hence, Hardy's readers would have seen it as a possible but morally questionable act. Davis suggests that the wife-sale, when later revealed in court, provides "delayed justice for an earlier crime" (113); beyond that reading, however, rests Hardy's deeper purpose: to explore the interplay between the Passion and the Intellect as revealed through human relationships. Within *The Mayor of Casterbridge*, Hardy focuses more upon how characters respond to legal entanglements than his interest in capital punishment. Instead, Hardy includes sites of capital punishment and near-images of hangings to illustrate facets of the characters' Passions and Intellects.

Hardy begins Henchard's battle with Passion and Intellect during the wife-sale in the "furmity-booth" at the fair (*MC* 5). In the early skirmishes of this battle, Susan Henchard displays the Intellect in contrast to her husband Michael's Passion. As Henchard consumes a second rum-laced bowl of furmity, Susan, holding their daughter Elizabeth-Jane, suggests that they look for "lodging," concerned that they "may have trouble in getting it if [they] don't go soon" (6). Her logic recognizes a potential problem in Henchard's lacing of his furmity with rum and attempts a smooth resolution to the predicament in which Susan finds herself, but to no avail. Henchard, emboldened by two additional bowls of furmity heavily laced with rum, gives voice to his frustration of married life, proclaiming himself "a fool" for "[marrying] at eighteen" who now must endure "[penury]"

because of it (7). With Passion controlling his Will, Henchard speaks of his resentment at having lost his dreams through his early marriage and questions why “men who have got wives and don’t want ‘em shouldn’t get rid of ‘em as these gipsy [sic] fellows do their old horses” (7). Hardy shows Susan’s strength in her enduring Henchard’s denunciation of their marriage three times: first by ignoring his outburst, second by viewing his offer to sell her as a joke, and third by trying, once again, to remind him they needed to secure lodgings for the night (8). Each of Susan’s counterpoints to Henchard’s offer to sell her reflects logic and reason; she still characterizes Intellect to Henchard’s Passion. But after Henchard’s fourth request that someone “buy his goods” (7), Susan’s growing anger at his suggestion overrides her Intellect, allowing her Passion to control her Will. She admits to Henchard that living with him has not been easy and that she would willingly go with whoever buys her (9-10).

The battle between the two separate Passions continues until a sailor agrees to meet Henchard’s asking price (*MC* 10), and Susan agrees to go with him (11). Hardy uses the sailor as an external mediator to resolve the impasse between Henchard’s and Susan’s Passions. Neither Henchard nor Susan find happiness in their marriage, yet no legal remedy exists for them. Henchard has the only legal standing to petition for divorce as the Matrimonial Causes Act will not be enacted until 1857 (Bloy), some eight to eleven years after the novel’s 1846-49 setting (Weber 182). Expensive divorce proceedings that do exist remain beyond Henchard’s reach because of his self-admitted poverty. Therefore the sailor’s willingness to purchase Susan affords a logical if morally

questionable resolution to Henchard and Susan's marital plight as the sailor becomes the external Intellect resolving the battle between the two unbridled Passions. Through this "agreement to part" between Henchard and Susan, Hardy provides a remedy that will withstand even a legal charge of desertion (Davis 108). Nevertheless, after the liquor's effects have worn off the following morning, Henchard's Intellect reasserts its control over his Will, and he realizes he "must get out of this [contract] as soon as [he] can" announcing his thoughts "deliberately . . . with the air of one who could not catch [them] without pronouncing them" (MC 12). Though befuddled from the previous night's activities, Henchard, nevertheless, resolves to find Susan and their daughter Elizabeth-Jane. Aware of the role alcohol had played in the previous evening's debacle and feeling remorse for his actions, Henchard enters a church and on its altar swears an oath to "avoid all strong liquors for the space of twenty-one years to come, being a year for every year [he has] lived" (14). Swearing this oath reflects Henchard's Intellect reasserting its dominance over his Passion but in an unrealistic manner. Reason now intoxicates Henchard as much as the preceding night's rum and will cause his Passion to assert itself in other ways. This episode allows Hardy not only to provide the initial conflict that drives the remainder of the novel but also to reveal Henchard's battle between his Passion and Intellect.

Looming over the reunion of the former husband and his wife twenty years later is the history of "The Ring of Casterbridge" (MC 54), a site of many public executions. During their reunion, Henchard admits remorse for his prior actions, reveals he no longer drinks, explains how he searched for both Susan and

Elizabeth-Jane, and proposes a way he and Susan can remarry without exposing their shameful past (56). Henchard's Intellect now appears to operate in conjunction with his Passion, yet this tenuous balance between the two appears in doubt because of the ominous nature surrounding where he and Susan meet to discuss their future. Setting their reunion in this solitary location affords Hardy the opportunity to introduce the tragedies that occurred there: "for scores of years the town-gallows had stood at one corner; . . . in 1705 a woman who had murdered her husband was half-strangled and then burnt there" and more recently "pugilistic encounters almost to the death" occurred there (55). Although Hardy writes in his article "Maumbury Ring" that he believes "from the use of the word 'strangled' and not 'hanged,' it would seem that she was merely rendered insensible before the fire was lit" (*PW* 230), this strangling image suggests Hardy's near-images of hangings used in previous works. At the very least, the location's history revolves around punishment—especially capital punishment, a subject becoming more important to Hardy. Because the area's history deals with death and destruction, a meeting there bodes ill for Henchard and Susan's reconciliation as well as for Henchard's battle with his Passion and Intellect.

To manipulate the elements of Passion, Will, and Intellect that struggle for dominance in Henchard's nature, Hardy introduces Henchard's doppelganger, Donald Farfrae, a young Scotsman who arrives in Casterbridge the same evening as Susan and Elizabeth-Jane (*MC* 29-30). Because Farfrae possesses a method to help turn his bad grain "wholesome" (36) so it can still be sold, Henchard convinces Farfrae of the advantage to staying in Casterbridge as his

business manager over going to America to seek his fortune (49). Hardy allows Farfrae's opportunities and actions to mirror those of a young Henchard but with more impressive results. Though Hardy includes numerous examples of Henchard's and Farfrae's similarities and differences, one example of how each deals with one employee's infraction shows why Farfrae's success outweighs Henchard's. The example also conveys Hardy's attitude toward capital punishment.

Henchard and Farfrae each react to a difficult situation involving Abel Whittle, one of Henchard's workers, who fails to arrive at work on time for the fourth day in a row. On Whittle's third infraction, Henchard declares that if Whittle "were behind once more . . . he [Henchard] would come and drag him out of bed" and that if Whittle does not arrive at the designated time the next day, Henchard will "mortify [his] flesh" (75). Henchard's threat of physical punishment connects to society's threat of capital punishment as the penalty for some crimes. Hardy creates the link more fully when Whittle fails to arrive at work on time. Henchard administers his justice by proceeding to Whittle's house, awakening him, and demanding he leave for work at once, without the benefit of "breeches" (76). With Henchard behind him all the way, Whittle arrives at the granary with his nightshirt "[showing] below his waistcoat" (76). Seeing the man's humiliation and fear of Henchard, Farfrae overrules Henchard's edict and sends Whittle home to finish dressing (76). Farfrae's actions reveal Hardy's belief in a humane application of justice. When Farfrae accuses Henchard of being "tyrannical" in his actions, Henchard defends his position, retorting that his punishment of

Whittle “is to make him remember!” (76). Henchard’s defense of why he applied justice in the manner he did echoes the reasons of those who supported capital punishment. Henchard reasons Whittle will “remember” and not be late again; society reasons that fear of punishment will deter crime. Farfrae’s application of justice reflects a more humane attitude, hence his comment about Henchard’s being a “tyrant” (76). Farfrae voices Hardy’s unspoken attitude toward capital punishment that stems, in part, from his reaction to the hangings he witnessed in his youth.

In addition to revealing Hardy’s attitude toward capital punishment, this disagreement between the two men exposes their contrasting moral belief systems that result in changes of fortune for both men: Henchard, being the more Passionate; Farfrae, the more Balanced. The more Farfrae prospers, the more Henchard resents him. Eventually Henchard’s Passion overrules his Intellect again. He dismisses Farfrae from his service (*MC* 83) and subsequently forbids Farfrae from courting Elizabeth-Jane (89). This action by Henchard permits Farfrae to embark on his own business ventures but deprives Henchard of his competent manager who has helped his business to prosper. Because of his “Infinite Monster of the Passion” (*LN* 1:4)—his jealousy of Farfrae professionally (*MC* 146) and personally (161-2)—Henchard makes poor business decisions (“the rashness of dealing which led to this unhappy situation is obvious enough”), and his fortunes suffer leading to his eventual bankruptcy (168-9). When his Passion overpowers his Intellect, Henchard causes his own downfall. Through Henchard’s reversal of fortune caused by a lack of balance in his moral

reasoning, Hardy clearly demonstrates that moral harmony—a balance of the Intellect, the Passion, and the Will—must be attained for an individual to achieve and maintain success. But Henchard's lack of balance affects more than just his financial stability. Hardy compounds Henchard's financial disgrace with social disgrace. By resurrecting the specter of the wife-sale from Henchard's past, Hardy examines the shift in control in Henchard's moral reasoning from *Passionate* to *Intellectual* back to *Passionate*.

Creating the novel as an examination of a man's character allows Hardy to portray a man who rises from obscurity to the eminent positions of Mayor and town magistrate. Placing Henchard in the position of magistrate affords Hardy the opportunity to reflect some of his personal knowledge about the law as Hardy begins serving as a "borough magistrate" for Dorchester in April 1884 (Sampson 264), during the time he conceives and writes *The Mayor of Casterbridge* (Turner 92). Later in the novel, when the furmity woman comes to trial in front of the magistrates, one of whom is Henchard, Hardy applies not only his knowledge of literary devices (the poetic justice in Henchard's disgrace resembling Susan's disgrace at the wife-sale) but also his knowledge of actual judicial proceedings. For example, he makes a point of altering the woman's charge from being a "disorderly female and vagabond" to being a "disorderly female and nuisance" (MC 153), "probably" "as a result of his [Hardy's] experiences as a magistrate" (Davis 43). Another instance where Hardy demonstrates his knowledge of the duties of a magistrate occurs in the furmity woman's trial. The woman, a regular in the court, possesses more knowledge of legal proceedings than do the



magistrates themselves because she “had appeared in court so many more times than the magistrates themselves, that they were obliged to keep a sharp look-out upon their procedure” (*MC* 154). The woman exercises her legal knowledge as she indicates the “man who sold his wife” in her furnity booth as “the man sitting there in the great big chair” (155), referring directly to Henchard. After she reveals his role in the legally and morally questionable act, she proclaims that Henchard “has no right to sit in judgment” (155) of her because of his conflict of interest. Therefore, Henchard recuses himself from sitting in judgment “to keep out of any temptation to treat her hard for her revenge” and “[leaves] her” to the other sitting magistrates (155). The necessity for a magistrate recusing himself appears in the last clause in the Judicial Oath: “I will do Right to all manner of People after the Laws and Usages of this Realm without Fear or Favour, Affection or *Illwill*” (emphasis added; Sampson 265). Just as Hardy signed his oath on August 23, 1884 (Sampson 265), so Henchard would have signed a similar oath. Because of the past relationship between the furnity woman and Henchard and the possible illwill he might bear toward her, Henchard has little choice. He must recuse himself or be in violation of his oath. Thus Hardy depicts Henchard’s Intellect more in control of his character than is his Passion. Unfortunately, his inability to endure the subsequent scandal caused by her revelation allows his Passion to gain control of his character once more.

Following his disgrace in front of the remaining magistrates and the liquidation of all of his assets during his bankruptcy, Henchard despairs of improving his lot and longs for his former days when people held him in high

esteem. In an attempt to regain some of his lost stature, Henchard attempts to greet a “Royal visitor” as a delegate from the city, and Farfrae, as mayor, restrains him (MC 202-4). For Henchard, this humiliation at the hands of his former manager cannot be tolerated, so he plans a physical confrontation with Farfrae than could end in death (209). Hardy stages this confrontation on the second floor of a barn, near an open door with a drop of “thirty or forty feet to the ground,” with Henchard using a rope as a means of securing one of his arms behind his back to even the odds for Farfrae (207). Even though Hardy does not paint Henchard’s scuffle with Farfrae as a true near-image of a hanging, the elements invite a comparison, especially when Hardy describes Henchard and Farfrae “rocking and writhing like trees in a gale” with each man holding the other’s “collar” (207). The “collar” reference makes a connection with the rope surrounding the prisoner’s neck while the “rocking and writhing” simulates the swaying of the body once it has passed through the drop, suspended by the rope only. Deliberately translucent within the text since Hardy describes *The Mayor of Casterbridge* as a “study in one man’s character,” this suggestion, nevertheless, demonstrates his continued interest in hanging.

Through the sufferings of Henchard, Hardy demonstrates the consequences of ignoring moral reasoning: without a balance between the Passion and the Intellect to govern the Will, Henchard ultimately perishes while Farfrae, whose actions reflect Hardy’s desired balance, thrives. Henchard reacts to the conflicts within his life through an overabundance of emotion: anger, frustration, jealousy, guilt, and shame. Because he makes decisions based upon

these emotions, he encounters legal difficulties. In this manner, Hardy blends the secondary legal issues with his protagonist's fate, revealing the law's prevalence within society and its ultimate power over the individual. How individuals react to legal difficulties rather than how the law controls individuals appears to interest Hardy the most at this point in his career. For Hardy, the law exists, as neither good nor bad; how society applies it (equitably or not) and how an individual reacts (or is permitted to react through social expectation) becomes a clearer focus for him. To that end, Hardy continues to bury the legalities of his text behind character studies as he embarks upon in his next novel, *The Woodlanders* (1887).

Examining how Hardy combines his concept of moral reasoning with his growing disdain for capital punishment within his novels from this period highlights his refinement of his technique as a writer. His focus upon the law within those characters' lives, however, remains submerged beneath his exploration of relationships between people and between individuals and their surroundings. Exploring these relationships provides a venue for Hardy to examine the legal entanglements in the lives of his characters, especially the laws concerning their courtship, marriage and divorce. Though Hardy focuses on marital laws, not all of his legal dilemmas surround them. For example, Hardy uses tenancy laws in his novel *The Woodlanders* as the thread connecting his examination of the Passion, Intellect, and Will to his near-image of a hanging and to his views on capital punishment.

Hardy's interest in tenancy laws (liferholds and freeholds) may stem from a familial event that he relates in the *Life*. Hardy's father, Thomas Hardy the Second, possessed a liferhold for the property on which his grandfather John Hardy had built a "dwelling, with garden and field attached" as a wedding present for his son Thomas Hardy the First (*Life* 26). Although Thomas Hardy the Second owned "several small freeholds elsewhere," he never abandoned the idea of purchasing the freehold of the property at Higher Bockhampton on which he had been born, offering to purchase the liferhold from the landlord. The landlord, however, remained "obdurate," and so Thomas Hardy the Second "finally gave up the idea of retaining Higher Bockhampton house in his family after his death" (*Life* 26). This description in Hardy's autobiography provides a glimpse into Hardy the novelist's views on tenancy laws. While the landlord's refusal to sell the liferhold to Hardy's father (the Second) does not create any significant hardship for the family, it does exemplify the power landlords possessed over their tenants and, in some ways, hints at the moral reasoning that Hardy focuses on in his works.

Hardy's novel *The Woodlanders* relates the story of Marty South, the daughter of a simple workman, who loves Giles Winterbourne, an apple and cider merchant, who in turn loves Grace Melbury, the educated daughter of a timber merchant. Hardy shows Mr. Melbury's Passion dominating his Intellect as he has resolved to marry Grace to Giles as a means of obviating his sin of marrying Grace's mother away from Giles' father. To that end he has provided Grace with an excellent education to make the "gift as valuable a one as it lay in

his power to bestow”; nevertheless, Mr. Melbury also believes that he is sacrificing her to “a poor man” when she now possesses the ability to secure one of better means (*W* 19). Though a less than successful cider and apple merchant because of his “forthrightness of speech” (36), Giles possesses a “marvellous power of making trees grow” (63), and succeeds in obtaining Melbury’s permission to marry Grace if he can win her (62). Hardy has set the stage for Winterbourne’s lifeholds to affect his suit.

Hardy’s knowledge of tenancy laws becomes apparent in how he establishes Winterbourne’s lifehold. To keep matters simple, Hardy could have had the lifehold depend on Winterbourne’s own life but that would not have allowed for the twist in Hardy’s plot. Hardy entangles Winterbourne and his fortunes in the lifehold of John South, Marty’s father, who is ailing. John South reassures his daughter that Mrs. Charmond, the landlady, cannot “turn [them] out till [his] poor soul is turned out of [his] body” because “’tis lifehold, like Giles Winterborne’s” (*W* 15). Marty’s question to her father about their security in the cottage reveals the anxiety a lifehold produced in those who had no other shelter in which to reside once the lifehold expired. In fact, Hardy has Giles confess to Marty his fears about losing the houses upon her father’s death (35). The reader almost hears Hardy’s sentiments about the injustice of the tenancy laws when Winterbourne remarks, “it almost seems wrong that houses should be leased for lives” because they often result in “mixed feelings” (35). Hardy’s moral reasoning subtly reveals itself once again as the external Intellect, the tenancy law, lacks emotions. By lacking *com-Passion*, the law causes a confusion of emotions,

their Passions, in those whose lives it dictates. This emotional confusion extends to the community as it expresses its concern (or lack thereof) for both Giles and Marty following John South's death when Hardy's narrator comments that "everybody thought of Giles; nobody thought of Marty" (105). Now as the lifehold of all the cottages attached to the life of her father expired upon his death, she, too, has nothing to call home. Society once again has chosen to look the other way, for "had any of its members looked in upon her during those moonlight nights which preceded the burial of her father they would have seen the girl absolutely alone in the house with the dead man" (105). Marty's life has been as disrupted as Giles' by her father's death and the loss of the lifehold (if not more so because she is a woman), yet Hardy's society focuses upon Giles. The law turns each of them out their homes equally, but the effect is decidedly unequal for, as a man, Giles has more opportunities to provide for his own care and livelihood. Marty South, as a woman, possesses fewer opportunities for self-sufficiency. Nevertheless, Hardy deals only with the effects upon his protagonist.

Creating Giles Winterborne's legal dilemma (linking the loss of his cottage to John South's death) allows Hardy to inject a supernatural twist into his tale. John South believes his life is intertwined with the life of the tree outside his window ("that tree will be the death of me") (*W* 15). This belief that his life is conjoined with that of the tree provides the link Hardy needs for his near-image of a hanging. As John South watches the tree, he believes the tree "will blow down and kill" him (90), just as a condemned prisoner is dropped "down" through the platform of the gallows and so is killed. South's Passion controls his Intellect and

Will, causing this irrational belief. Yet through South's belief Hardy gives the reader a subliminal connection between South's thoughts about the tree and a prisoner's thoughts about the gallows: each will die by its power. To alleviate some of John South's apprehension about the tree's power, Giles offers to remove some of the lower branches to lighten its weight, providing South with a stronger sense of security (91). As Giles chops off branches, he contemplates the legality of his actions because "he was operating on another person's property to prolong the years of a lease by whose termination that person [the leasor] would considerably benefit" (92). While thinking about his actions from the legal standpoint, Giles' moral reasoning takes control because "from [the legal aspect] he doubted he if he ought to go on" while "on the other hand he was working to save a man's life" which "seemed to empower him to adopt arbitrary methods" (92). Giles' thoughts reveal the conflict between his Intellect and his Passion. His Intellect realizes the illegality of his actions but his Passion dominates Giles' actions because they are for a greater good—to save a man's life. Here, Hardy directly reveals in his novels the concept of moral reasoning he sketched in his notebook twenty-four years earlier: Intellect, Passion, and Will must balance each other and become an "Amalgam<sup>n</sup>" to achieve "moral harmony" (*LN* 1:4). Following the law (Intellect) without concern (Passion) for South's life would be morally repugnant to Giles. So, when Edred Fitzpiers, a mystic and physician new to the area, advises the tree be removed to affect an improvement in John South's health and well-being, Giles complies, "[directing] a few workmen to bring a cross-cut saw" to fell the tree (102), even though no one

“[fells] a stick about here without its being marked first, either by her [Mrs. Charmond] or her agents” (101). Giles risks legal penalties by felling the tree without receiving permission to do so. The next day when John South sees that the tree has been cut down, “his whole system seemed paralysed by amazement” and rather than rallying and recovering, John South’s health continues to fail and, ironically, he dies “that evening as the sun [goes] down” (102). With South’s death, Giles’ future becomes more precarious, so the “hanging tree” kills not only John South, but also Giles Winterborne.

Continually reminding the reader of the hanging-tree’s effect throughout the text, Hardy connects it to Giles’ loss of his future. One significant reminder of its power occurs when Creedle, Winterborne’s assistant, enumerates exactly the amount of Winterborne’s loss: “Ye’ve lost a hundred load of timber well seasoned; ye’ve lost five hundred pound in good money; ye’ve lost the stone-windereed house that’s big enough to hold a dozen families; ye’ve lost your share of half a dozen good waggons [sic] and their horses;—all lost!—through your letting slip she that was once yer own” (*W* 176). While Creedle here alludes to Winterborne’s loss of Grace Melbury as his wife, the astute reader recalls one reason why Mr. Melbury objected to the marriage: Giles no longer has even a home to call his own (107). The felling of the hanging tree outside John South’s window has brought literal death to one and figurative death to another. Hardy presents another example of connecting the felling of the tree to Giles’ loss of his future when Mrs. Charmond, who is in love with Edred Fitzpiers (now Grace Melbury’s husband), inquires why Grace did not marry Giles. She learns that



because her agent “wouldn’t renew them [the lifeholds], though it [was] said that Mr. Winterborne had a very good claim, . . . the match was broke off” (199). Mrs. Charmond realizes that “in refusing his [Giles’] reasonable request” to extend the lifehold even though South had already died, she unwittingly gave Fitzpiers the opportunity to marry Grace. Charmond further recognizes that “a business matter [Intellect]” has “nettled [her] own heart [Passion]” (associations added) (199-200). Through both examples, Hardy links law and moral reasoning: Charmond’s decision to disallow Giles’ request to extend the lifehold occurs because of her Passion, her anger, at Giles’ refusal to back his timber-laden wagon out of the way to allow her lighter carriage to pass (95-7). Melbury’s objection to Giles’ marrying Grace is based upon his Intellect, his logic because Giles has no home in which Grace may live.

Throughout this middle period, Hardy’s interest in character study takes precedence over his interest in the law. Rather than infusing his text with numerous legal connections, he reduces the number and variety of legal entanglements in his prose as he concentrates on a single legal specialization, marital law, and allows other legal difficulties to provide stumbling blocks for his characters. During these years Hardy’s position as a magistrate provides him with additional material with which to shape his novels, and, because of the cases he hears, Hardy develops a wry view of the relationship between individuals and the law, an attitude he reflects through his characters. Meanwhile, Hardy’s concept of moral reasoning develops more clearly, allowing him to connect the individual’s struggle with the Passion and the Intellect to

social morality and to Victorian capital punishment. Since he deliberately sets two short stories within the time of public executions, Hardy consciously moves closer to his quiet condemnation of capital punishment that manifests itself more poignantly in his later works. When he tries to reconcile the conflicting interests of the “scientific,” “emotional,” and the “spiritual” so they will not be “interdestructive” (*Life* 153), Hardy composes the quotation that prefaces this study about the inhumanity of the law. He extends this denunciation about the law as he moves through his final prose period.

## CHAPTER FOUR

### CLOSING ARGUMENTS:<sup>11</sup>

#### EVIDENCE IN DEFENSE OF HARDY'S STYLE

Elements of law continue to drive plot and characterization in the last phase of Hardy's prose period, 1889-1898. What began as a morbid fascination with death by hanging has become one of the methods Hardy uses to demonstrate his concept of moral reasoning. In 1863 he began exploring the struggle among the Passion, Will, and Intellect, equating the latter with both internal (personal) Law and external (social) Law. In his early phase, when he was twenty-five to thirty-five years old, Hardy alluded to the brutality of the hangings he had witnessed a decade earlier through a variety of near-images. During his middle years, 1876-1889, Hardy begins to recognize that the enforcement of capital punishment in the past often resulted in injustices, and while he still includes near-images of hangings in some of his novels, he deliberately chooses to set two of his short stories during a time when minor offences could receive the strictest punishment from the law—hanging. Having incorporated hangings and near-image hangings in his early and middle works, Hardy uses both actual hangings as legal punishment as well as near-images of

hangings in his later prose works (1890-1898) as an indictment of capital punishment and the Victorian society that continued to endorse it. The two short story collections in the period, *A Group of Noble Dames* (1891) and *Life's Little Ironies* (1894) involve legal situations, legal characters, or manipulations of the law for self-protection. A discussion of one tale from *Life's Little Ironies* that deals with a hanging as legal punishment as well as an analysis of Hardy's last two novels, *Tess of the d'Urbervilles* (1891) and *Jude, the Obscure* (1895), will unfold his continued use of legal entanglements to castigate Victorian society for failing to achieve balance between its Passion and Intellect in its application of the law, especially concerning capital punishment.

Within *Life's Little Ironies*, Hardy presents "A Few Crusted Characters" (1891), a collection of short sketches reminiscent of Chaucer's *Canterbury Tales*. Adapting Chaucer's plan for having his travelers entertain each other nightly with a series of tales, Hardy's travelers recount a cluster of stories to amuse a traveling companion, Mr. Lackland, a middle-aged man returning to the town of his youth after thirty-five years (*LLI* 144-7). As he inquires about individuals he remembers from his boyhood, different members of the group tell stories that expose the results of uncontrolled Passion: from being fickle and superstitious to suffering because of pride, shame, fear, and revenge. One of the women with whom he is traveling relates the sketch concerning "The Winters and the Palmleys," a tale of one woman's vengeance upon another who had stolen away her love, a tale that reveals Hardy's conclusions about lacking balance among the Passion, the Intellect, and the Will. As is customary for Hardy, he creates a

social struggle to heighten the tension. Each woman marries, has a son, and subsequently becomes a widow, one fairly prosperous, the other poor. Mrs. Winter, the wealthier of the two, agrees to employ Mrs. Palmley's son as an "errand-boy" and inadvertently causes his death when she requires him to take a message "to the next village" (185). Adamant that the note be delivered that evening, Mrs. Winter disregards the young boy's fear of darkness, and, as he is returning, something "comes out from behind a tree and [frightens] him into fits," from which he subsequently dies. His death causes his mother intense grief but little affects Mrs. Winter (185). Mrs. Winter's Intellect caused her to ignore the extent of the young boy's fear, his Passion. Within this brief episode at the beginning of the tale, Hardy reveals Mrs. Palmley's motive for revenge upon Mrs. Winter that leads to the hanging image at the end. Hardy's narrator comments that "the other woman [Palmley] had nothing left to live for, and vowed vengeance against that rival who had first won away her lover, and now had been the cause of her bereavement" (185), all because of Mrs. Winter's dis-Passionate Intellect.

As his tale continues, Hardy depicts the havoc wreaked by the women's unchecked Passions and Intellects which entangle Mrs. Winter's son Jack in Mrs. Palmley's net of vengeance. In brief, Jack falls in love with Mrs. Palmley's well-educated niece Harriet, who, on the spur of the moment, "half-promises" to marry him (*LLI* 186). Harriet's Passion controls her Will and allows her to accept Jack's gifts even though she does not consider him a serious suitor. Meanwhile, during the course of their courtship, Jack decides to become a farmer, so he leaves the

village to accomplish this goal (186). His Intellect urges self-improvement so he can be a worthy partner for Harriet. While away from Longpuddle, Jack sends Harriet many letters professing his love; however, his poor penmanship, coupled with his atrocious spelling, appalls Harriet who sends him few replies, each colder than the last (186-7). With Jack's absence, Harriet's Passion cools. Her Intellect reasserts itself. She realizes Jack is beneath her intellectually as well as socially, for he lacks education. She breaks the engagement (187)! Jack returns to Longpuddle and requests that Harriet return his letters so she cannot shame him with other lovers she may have. She refuses, locking the letters in her aunt's "work-box" (*LLL* 188-9). Hardy pits Jack's Passion (his fear of being shamed) against Harriet's Intellect (her logic of keeping his letters as "evidence . . . she had good cause for declining to marry him") (189). Angered that she refuses his request, Jack's Passion urges him to break into Mrs. Palmley's cottage during the night to retrieve his letters, determined to destroy them. He quietly enters the cottage, locates the work-box, and returns home with it. The next morning, as he sits beside his mother's hearth, burning the last of the letters, Jack discovers money in the bottom of the work-box (190-1). Through this startling revelation, Hardy inserts the simple twist that causes the death penalty to come into play. Jack's anger and spite cause him to break into Mrs. Palmley's cottage to retrieve monetarily worthless letters; he leaves with a box containing the letters plus enough money to convict him of felony burglary—all because his unchecked Passion overruled his Intellect.

Hardy has not yet finished with his condemnation of unbridled Passion. Setting the tale in the years prior to 1830 allows Hardy to use his hanging image to illustrate his conclusions of lacking balance among the Passion, the Will, and the Intellect. Without such a balance, Jack's death, either literal or figurative, ensues. Because Jack's Passion overruled his Intellect, he breaks into Mrs. Palmley's cottage. This act provides the constables with sufficient probable cause to arrest him, suspicion of breaking and entering. Having Mrs. Palmley's money in his possession, however unwittingly, condemns him to death. Hardy's narrator comments that Jack's trial is "a short one" because Hardy focuses more on the sentence than on the trial. Having Jack endure a public hanging provides Hardy with the opportunity to demonstrate the inhumanity of capital punishment as the narrator recounts how Jack "was so boyish and slim that they [the constables and executioner] were obliged *in mercy* to hang him in the heaviest fetters kept in the jail, lest his heft should not break his neck, and they [the fetters] weighed so upon him that he could hardly drag himself up to the drop" (emphasis added; *LLI* 191-2). Ironically, the jailers demonstrate the mercy that the letter of the law does not. Jack had stolen an amount of money sufficient to convict him of felony burglary; little did it matter he had no intention of stealing money. A crime had been committed; someone had to pay. Hardy's 1881 commentary about the letter of the law lacking consciousness, an awareness, of the terror, pain, and suffering it initiates through its application has begun to crystallize. Hardy's next novel, *Tess of the d'Urbervilles*, continues this

crystallization of his commentary as he depicts the tale of “a pure woman” (*T* title page).

*Tess of the d’Urbervilles*, published in 1891 and arguably his best-known novel captures the life of a young woman destroyed by two rapes (one physical and one emotional). One critic suggests that Hardy examines laws concerning rape, seduction, marriage, and divorce within Victorian society (Davis 45, 68-86, 94-6, 138-41). In a similar vein, another critic cogently argues the fictional case of *R. v. Durbeyfield*, revealing a possible defense of provocation for Hardy’s heroine (Williams 27-59). Neither critic considers the possibility of a more important thread in Hardy’s use of the law: his growing belief in the inequities and capriciousness surrounding the application of capital punishment. In *Tess*, Hardy sets the action at a time well past the cessation of public executions. Yet within his text it is possible to find both an actual hanging (Tess’s execution for murder) as well as a near-image of the hangings he witnessed so many years prior to his writing of the novel. He uses these images to support his concept of moral reasoning about the Passion, the Will, and the Intellect.

Hardy’s near-image of the hangings occurs in “Phase the Fifth” on the wedding night of Tess and Angel Clare. After Tess tells Angel about her rape by Alec d’Urberville, Angel, in his disbelief, questions her (*T* 232-3) in a manner reminiscent of Henry Knight’s cross-examination of Elfride Swancourt about her previous lover in *A Pair of Blue Eyes* (*PBE* 333-5). Though Angel’s questioning is gentler than that of Knight, a barrister, Tess nevertheless stands trial and has no “advocate” to plead her case, to “set him [Angel] right” as Hardy himself



remarks (*T* 238). Following her interrogation by Angel, Tess retires to the “bride-chamber” while he sleeps in the sitting-room (237). Upon rising the following morning, Tess reveals to Angel that she had contemplated suicide the previous night “under [his] mistletoe . . . with the cord of [her] box” (241). Though not an image of a woman plummeting to her death as from a scaffold or through the drop at an execution, Tess’s choice of hanging as her method of suicide nevertheless recalls the hangings of Hardy’s youth. Tess believes she has been accused, tried, and convicted of killing Angel’s happiness, so she sentences herself to death for her crime, taking the role of executioner into her own hands. She admits as much to Angel when he questions her about her motives. She confesses that she “could not—do the last thing! [She] was afraid that it might cause a scandal to [Angel’s] name” (241). Once again Hardy has used a hanging or near-hanging to reflect the conflict among the Passion, the Will, and the Intellect. Here Tess’s Passion (guilt and shame over her past) has been overruled by her Intellect in one of its last acts within the text (a suicide might cause a scandal to Angel’s name), thereby preventing the Will from acting to destroy her own life. Tess’s trial by Angel, though, has not concluded; his verdict remains to be pronounced, and he sentences her to live apart from him (244-7). Hardy includes Tess’s “trial” and “verdict” to set the stage for the remaining two sections of the novel’s action: Tess and Angel part; she returns to farm labor; he emigrates to Brazil; Alec sees Tess again; he pursues her; she rebuffs him; he preys upon her family; she returns to him; Angel returns to England; he searches for Tess; he finds her living with Alec (254-367).

In the final phase of the novel, Hardy completes the tragedy heightened by the suppression of Tess's personal Intellect. Upon seeing Angel again and admitting that she now lives with Alec, Tess's Passion again overrules her Intellect as it has continually throughout the novel. Her irrational Passion allows her Will to act, committing the murder of Alec d'Urberville for "[tearing] her life to pieces" (*T* 369). Tess now faces legal execution for the crime of murder, and her execution as punishment for said crime allows Hardy to create his hanging image at the end of the text. Hardy provides no description of Tess's trial and only obliquely describes her hanging—it is a foregone conclusion. But Hardy's scant description belies his knowledge of the Capital Punishment Act of 1868 that removed executions from public viewing. This Act allowed executions to take place within the walls of the prison and required the attendance of only the "sheriff charged with the execution, the gaoler [sic], chaplain and prison surgeon" (Cooper 174). This left the decision to admit "the . . . relatives of the prisoner . . . to the discretion of the sheriff or visiting justices of the peace" (Cooper 174). Accordingly, Hardy depicts Angel and 'Liza-Lu, Tess's sister, "[emerging] . . . through a narrow barred wicket in a high wall" as they make their way out of Wintonchester (*T* 383), thus sparing them the pain of watching Tess's execution. The historian Cooper does not state whether this new Act *required* the tolling of bells and the raising of a black flag; however, early drafts of legislation to abolish public executions included "recommendations . . . that a hoisted black flag and the loud tolling of bells . . . [inform] the public that an execution was concurrently taking place" (125). Fully aware of the Act's requirements, Hardy accordingly

notifies the public of Tess's death within the walls of the prison by having "a black flag" "move slowly up the staff" "a few minutes after the hour had struck" (*T* 384). Setting the novel approximately two decades after the last public hanging occurred in England permits Hardy to illustrate that even though public executions had ceased, private executions still existed. These executions, Hardy seems to imply, served only to exact society's retribution not to reveal society's moral reasoning. Hardy conveys these sentiments when he responded to a question he received in 1903 concerning his "opinion on the advisability of abolishing it [capital punishment] in highly civilized communities" (*Life* 341). Hardy's brief reply carries his observations:

As an acting magistrate I think that Capital Punishment operates as a deterrent from deliberate crimes against life to an extent that no other form of punishment can rival. *But the question of the moral right of a community to inflict that punishment is one I cannot enter into in this necessarily brief communication.* (emphasis added; *Life* 341)

Hardy's second sentence must be read fully in light of the first in which he identifies himself as an "acting magistrate"; as such, he will faithfully abide by the oath he signed upon taking office, that he will "do Right to all manner of People after the Laws and Usages of this Realm without Fear or Favour, Affection or Illwill" (Sampson 265). If Hardy had stated publicly and from a legal standpoint ("as a magistrate") that capital punishment should be abolished, he would have been in violation of his oath. By adding his second sentence, Hardy instead

chooses to maintain his right as an individual to have his own concept of morality; he strongly suggests that he finds a society's imposition of capital punishment to be morally wrong.

Even though Hardy knows that a private execution falls within the legal requirements of the novel's time period, he also knows (from his early days in London between 1862 and 1867) (*Life* 40-56), of the controversy surrounding public executions and capital punishment. Debates over the use of capital punishment had been occurring from 1832 through 1837 when "a number of anachronistic laws previously punishable by death" were "abolished" (Cooper 42). In the intervening years between the abolition of these laws and the time Hardy lived in London, arguments against public executions had become more intense. Ultimately a Royal Commission on Capital Punishment held hearings between 1864 and 1866, and, in January 1866, it recommended the "[p]assage of] an Act to end public executions" (145). Working in Blomfield's office near the Temple Bar and being close friends with Horace Moule who had been admitted to the Middle Temple in 1862 (Gittings 65) placed Hardy in close proximity to the controversy surrounding capital punishment. This controversy filled the newspapers and broadsheets of the day; in fact, "newspapers often took the lead in reform" (Cooper 76). In the early days of the capital punishment reform movement, John Stuart Mill, one of the chief influences upon Hardy's thinking, "credited John Black, the editor of the *Morning Chronicle*, with a great share in reforming the laws and courts" (76). As entries in both his personal and literary notebooks reveal, Hardy did extensive reading of periodicals—both concurrent

with and previous to his lifetime. Having read these periodicals, Hardy could hardly escape being influenced by articles debating capital punishment's effectiveness and its morality.

By the time he writes *Tess*, Hardy has spent a significant portion of his prose career recalling society's implementation of capital punishment upon Martha Browne and James Seale, the two individuals whose hangings he observed as a young man. Too, he has reflected upon its effectiveness and morality. In *Tess*, Hardy illustrates the destruction of one woman through numerous entanglements that culminate in her execution for the crime of murder, a seemingly logical outcome for a brutal crime and one that Victorian society would have accepted without question. Nevertheless, Hardy directs his underlying social criticism against the very punishment Victorians demanded for murder—death by hanging. Hardy believes that society's application of the law as “the preservation of values [was] ‘based on nothing more tangible than . . . an *arbitrary law of society* which had no foundation in nature’” (emphasis added; Williams 58, quoting *T* 277). This statement applies to *Tess* only if the reader acknowledges Hardy's growing belief in the immorality of capital punishment, immoral because it did not serve as a deterrent to crime but because of the inequity and often capriciousness with which it was dispensed.

Hardy espouses this belief clearly in his article “Maumbury Ring” that appeared in *The Times*, October 9, 1908 (*PW* 225-32). Reflecting upon the excavations at Maumbury Ring, Hardy recounts the site's history, including the trial and execution in 1705-06 of a “girl who had not yet reached her nineteenth

year” yet “was tried and condemned for poisoning her husband, . . . to whom she had been married against her wish by the compulsion of her parents” (229). Hardy’s description of this girl’s circumstances invites some comparison to his initial plot development in *Tess*: Joan Durbeyfield schemes to have young Tess—approximately sixteen years old (*T* 46)—marry Alec d’Urberville by gaining employment with his family. Tess’s proximity to Alec would further Joan Durbeyfield’s scheme and would likely bring about the marriage she desires for Tess. Although Tess indicates no desire to do so, she eventually succumbs to her family’s demand (*T* 67-69). Though the desired marriage never takes place, Tess ultimately murders Alec and is condemned to death.

The similarity between the two situations becomes more clear as Hardy reflects on Maumbury Ring. In his article about its history, Hardy describes the young woman’s trial and execution as “sinister” and “ghastly,” but, even more to his horror, he reports that having “examined more than once a report of her trial,” he “[finds] no distinct evidence that the thoughtless, pleasure-loving creature committed the crime, while it contains much to suggest that she did not” (*PW* 229). While Tess admits to having murdered Alec d’Urberville (*Tess* 372), a close examination of Hardy’s text provides a defense of extenuating circumstances for her actions. Had Victorian society been so inclined, these circumstances could have allowed Tess the defense of provocation, thereby saving her life, a defense that ordinarily would have been “notably inappropriate to cases of dis-empowered and abused women; of female victims-turned perpetrators” (Williams 59). While Victorian society had little or no interest in

being “sympathetically inclined” to recognize the “links between powerlessness, exploitation, class, gender, identity, and individual action” (Williams 58), a key statement from his article about Maumbury Ring’s history reveals Hardy’s recognition of them: “Maybe he [Judge Price in the 1705-06 trial], like Pontius Pilate, was influenced by the desire of the townsfolk to wreak vengeance on somebody, right or wrong” (*PW* 229). Apparently, Hardy suggests, society’s unbalanced Passion for revenge outweighed its Intellect, an impartial weighing of the facts. Thus Hardy, in part, has explained his comment about “Justice [being] done” at the end of *Tess* (384); the matter is simple: Alec d’Urberville had been murdered and someone had to pay, regardless of circumstance.

Hardy’s treatment of the immorality of capital punishment within the subtext of *Tess* points to his ability to acknowledge consciously for the first time in one of his novels the impact of the hangings he witnessed some thirty-five years earlier. By setting the novel almost two decades after the Capital Punishment Act of 1868, Hardy frees himself from having to provide Tess with the humiliation of a public execution. Throughout the novel, the scandals surrounding Tess caused society to regard her as an object for derision and ignominy. A public execution would have served to bring further scandal to her life and to her family. With a private execution, Hardy allows Tess to retain some measure of dignity for her life, and allows Hardy to assuage his sense of morality. The Intellect of Victorian society—the law—has extracted its “pound of flesh” for the crime committed, but Hardy’s *com*-Passion (literally, “suffering with” humanity) causes his Will to afford her image a modicum of protection. Since he

has defined Tess in the text's subtitle as "a pure woman," he justifies his subtitle by having her succumb completely to her Passions—joy, fear, guilt, shame, anger, love, desperation, rage—abandoning her Intellect. By having her Will act according to the dictates of the "Infinite Monsters of the Passion" (LN 1:4), Hardy makes Tess surrender to her Passions so completely that she becomes pure Passion, an emotional overload that removes her Will to act. She lacks the Will to act until Alec's fatal taunting shocks her from an emotionally catatonic state and prompts her to violent action. Tess's Intellect remains buried until she frees herself though murdering Alec. Through Tess, "a pure woman," Hardy demonstrates the effects of the struggle among the Passion, the Will, and the Intellect. Without a balance among them, individuals are destroyed; as individuals are destroyed, so, too, societies collapse. Hardy extends this reasoning to society as a whole in his last novel, *Jude, the Obscure*.

With *Jude, the Obscure* (1895), Hardy provides readers with his most controversial yet most moral tale. In it, a young man finds his personal moral code in conflict with society's moral code. In his Preface to the first edition, Hardy informs his readers "of full age" that his tale "attempts to deal unaffectedly with the *fret and fever, derision and disaster*, that may press in the *wake of the strongest passion known to humanity*; to tell . . . without a mincing of words, of a *deadly war waged between flesh and spirit*" (emphasis added) (J 5). Hardy warns the readers that a battle between Passion and Intellect awaits them within the pages of his text. At age fifty-five, Hardy continues to reveal the conflict among the Passion, the Will, and the Intellect that he initially explored through



sketches in his first Literary Notebook thirty-two years earlier. Critics ignored Hardy's stated intent, recognizing only the "sorry [details he] deemed necessary to complete the narrative" (*J* Postscript 6). Subsequently, in his 1912 Postscript, Hardy wryly commented that "somebody discovered that *Jude* was a moral work" and that "an American man of letters, who did not whitewash his own morals, . . . was pleased to call [*Jude*] 'a religious and ethical treatise'" (6). While noting these comments with irony, Hardy, nevertheless, accepts them with hope for the public's eventual recognition of *Jude*, a moral tale that illuminates the deadly effects of personal Passion's overruling personal Intellects and that reflects societal Intellect's—the law's—lacking *com*-Passion in its administration of "justice." Therefore, the author's words in his Postscript that "the marriage laws being used in great part as the tragic machinery of the tale" and that "civil law should be only the enunciation of the law of nature" have caused some critics to focus solely on these elements without considering Hardy's own sense of moral reasoning (7).

My focus for *Jude* encompasses what Davis fails to consider within his analysis of Hardy's use of the law, and upon what Williams only lightly touches, namely Hardy's concept of moral reasoning. Hardy's sense of moral reasoning (that he began exploring in 1863) now pleads for a balance between the personal Passion and the Intellect and that society's Intellect, the law, be tempered with *com*-Passion. Hardy further employs his hanging/near-hanging motif to demonstrate the cruelty of the application of law as Intellect without *com*-Passion. While Hardy provides numerous examples of dilemmas within the text

involving moral reasoning, I provide only a few representative examples to affirm Hardy's characterization of the novel as a "moral tale" (J 5). The hanging images represent Hardy's moral commentary about the inequities in the application of justice.

From the outset of the novel, Hardy makes his plea for balance between the "flesh and the spirit" (J 5). His epigram "The letter killeth" (9) at the beginning of the tale (2 Cor. 3:6) warns the reader that strict adherence to the "letter" of the law without considering that its "spirit giveth life" will destroy individuals and societies. Hardy's epigrammatic caution should be read, in retrospect, as an expression of the moral reasoning he reveals in *Jude*. Hardy introduces the title character as a personal representation of the battle between flesh and spirit: Jude Fawley, an orphan, knows his existence depends on his great-aunt Drusilla Fawley's good will even though he knows she does not wish to be burdened with his care and is "obliged to let him earn any penny he can . . . a-scaring . . . birds for Farmer Troutham" (J 12). Jude's occupation as a human scarecrow (an oxymoron in itself) reveals his sympathetic nature when he realizes both he and the birds are "living in a world which did not want them" and that "Farmer Troutham can afford to let [the birds] have some [corn]" (14). Acting as an advocate for the birds' right to feed from the excess in Troutham's field, Jude exercises the spirit of the law over the letter of the law. Jude's *com*-Passion for the birds overrides Troutham's Intellect that demanded the birds be chased away. With this simple illustration of life, Hardy begins his moral tale.

Hardy extends his observations of moral reasoning to society in general. When Troutham discovers Jude's reprieve of the birds' death sentence, he beats him with the clacker Jude had been using to chase the birds from the field. To "the ears of distant workers" it appears Jude is simply chasing away the birds, not being punished by Troutham (*J* 15). Hardy interjects this seemingly casual detail to reveal in the early stages of the book his observations about society's blindness to the injustice of the law. The action of the birds provided no threat to the harvest of the crop. Though Troutham fires Jude, he pays him for a full day's work (15), not out of compassion but out of obligation. Troutham had hired Jude to scare the birds; Troutham protects himself by exercising the letter of the law when he pays Jude his wages. When his great-aunt Druscilla Fawley (with whom Jude lives) berates him for his dismissal from Troutham's service, Jude realizes he is "living in a world which did not want [him]" (14). She is "more angry with Jude for demeaning her by coming there than for dereliction of duty," and "she rated him primarily from that point of view and only secondarily *from a moral one*" (emphasis added) (15). Neither of these individuals upon whom Jude's survival rests, Troutham nor Druscilla, demonstrates any *com*-Passion. They display only unemotional, logical explanations and chastisements. Following the scolding from his great-aunt, Jude reflects upon life, postulating that "growing up brought responsibilities" (17). He realizes that "Nature's logic," which Jude perceives as "mercy towards one set of creatures," actually "was cruelty towards another [set of creatures]" (17). This realization "sickened his sense of *harmony*" (emphasis added) (17). Through Jude's thoughts, Hardy reveals his disdain

toward society's morality (or amorality as the case may be). How to affect a moral harmony in life and in society had plagued Hardy since 1863. He continued to ruminate upon society's moral reasoning thirty-two years after making his initial journal entries.

Considering the condition of Jude's life at his home in Marygreen, little wonder he views Christminster, a nearby city, as a potential means of escape from his current conditions. As his infatuation with the unknown city of Christminster continues, Jude asks two elderly men accompanying a load of coals if they have come from there. Though they had not, this encounter provides Jude with additional information about the city of his dreams (*J* 21). One of the men informs him that "'tis all learning there [in Christminster]—nothing but learning except religion" (21) and though it may take "five years to turn a lirruring hobble-de-hoy chap into a solemn preaching man with *no corrupt passions*" (emphasis added), they can "turn un out wi' a long face, and a long black coat and waistcoat, and a religious collar and hat, . . . so that his own mother wouldn't know un sometimes" (22). Hardy's phrase "corrupt passions" lacks specificity as to which passions are "corrupt," implying that all passions may be. Hardy implies that learning and religion, (Intellect), lack emotion (Passion); without *com*-Passion, individuals so thoroughly change, they become unrecognizable. Within the first twenty-two pages of the novel, Hardy has confirmed his assertion from the Preface: the novel portrays a "deadly war between flesh and spirit" (5). Now Hardy uses his recurring hanging motif to continue to lay siege to Jude's personal moral code, ultimately destroying him.

Within the novel Hardy uses his hanging motif to reveal the destruction of his characters. By using nine different near-hanging images and one actual hanging, Hardy blends his concept of moral reasoning with his attitude toward capital punishment, thereby solidifying his social commentary. The initial near-image in the text occurs when Jude is a young child. Hardy's observations about society's morality (or amorality) extend beyond rustic villages to cities themselves, from Marygreen, Jude's home, to Christminster, a university city. Hardy represents Christminster as the seat of learning, as an escape from Marygreen and provinciality; it has drawn Mr. Phillotson, Marygreen's schoolmaster (*J* 9-12), and has enchanted Jude to the point that he desires a view of the "heavenly Jerusalem" to which Phillotson has journeyed. Anxious to glimpse the city, Jude walks along a "hedgeless highway" (17) near which "[stands] a weather-beaten old barn" (18). He notices "two men . . . repairing the tiling," on the roof, observes a ladder leaning against the structure, and climbs it. When he reaches the roof where the men are working, Jude asks in which direction the city of Christminster lay (18). Later in the evening, Jude "[ascends] the ladder to have one more look at the point the men had designated, and *perched himself on the highest rung*" (emphasis added; *J* 18). Here Hardy presents the beginning of a near-image of hanging: Jude's ascending the ladder reveals his first actual steps toward the city in which he will ultimately die, just as the prisoner ascends the stairs of the platform to the drop through which he will hang. Though the image remains incomplete (Jude does not fall from the ladder), by lifting Jude to a precarious height, Hardy hints that the walls of Christminster hold the outcome

of both Jude's and society's sense of morality: death, both moral and physical. Hardy includes the near-image to show Jude's Passion driving him to an unreal expectation—that he, a poor orphan, could aspire to a university education without consequences. His Passion has sublimated his Intellect and drives his Will to act accordingly.

Hardy's next near-image of hanging occurs approximately seven years later when Jude, now married, realizes the true nature of his wife Arabella Donn. Arabella destroys Jude's ideal image of her when "a long tail of hair, which Arabella wore *twisted* up in an *enormous knob at the back of her head*, was deliberately unfastened, stroked out, and hung upon the looking-glass" (emphasis added) (*J* 49). Hardy's subtlety of description belies the image he creates. The "twisted" tail in an "enormous knob at the back of her head" imitates the twisting of the rope around the condemned prisoner's neck, with the knot being strategically placed against the neck so as to snap it as quickly as possible when the drop opens. Hardy uses this imitation rope of hair to reveal how Arabella manipulates the law so as to achieve what she wants. She first manipulates the law when she deceives Jude with a false pregnancy to wrest a wedding from him. Her family even "[declares] that [the marriage] was the sort of conduct they would have expected of such an honest young man as Jude *in reparation* of the wrong he had done his innocent sweetheart" (emphasis added) (*J* 48). Hardy employs a legal term, "reparation," to indicate that Jude has committed a crime against Arabella by convincing her to have sexual relations with him, presumably in return for a promise of marriage. Though Jude gave no

explicit promise to Arabella, she manipulated the situation of their courtship so as to imply an implicit promise. Accordingly, Jude forsakes his dreams of a university education and marries her. Thus, the rope of hair represents the death of Jude's future, the strangling of his dreams for a university education in Christminster. The imitation rope of hair also foreshadows Arabella's manipulation of the divorce laws to effect her divorce from Jude though she had committed bigamy. By requesting that Jude not reveal her second marriage in his petition for divorce, Arabella tightens the noose she has placed around Jude's life by encouraging him to engage in collusion, an illegal practice that would have precluded the court's granting of the petition. Within this brief description Hardy provides the two sides of the struggle he portrays in the text: while Arabella's Intellect provides her with the means to effect first her marriage to Jude and then her subsequent divorce from him, Jude's Passion for Arabella causes him to override his Intellect's admonition against marrying her.

Though Hardy's next allusion to capital punishment does not include an image or near-image of an execution, he employs an historical figure as one of the "spectres" who Jude imagines greets him as he arrives in Christminster (*J* 64-6). Jude imagines the ghosts of "poets," "scientists," "philosophers," "philologists," and "official characters" floating above him (*J* 65) as he savors the intellectual atmosphere of Christminster his first night in the city. Among the individuals Jude senses hovering around him is Sir Robert Peel, Prime Minister (*J* 66), an early advocate of reforming capital punishment (Cooper 39-40). Hardy includes Peel in the text for a double purpose. Although Peel initially supports abolishing

some of the crimes for which a criminal could be hanged, he later becomes adamant that no further changes need to occur with respect to capital punishment. Hardy uses Peel to mirror the struggle between the Passion (society's desire to ease the laws requiring someone's death) and the Intellect (society's need for reparation and for deterrence). This struggle manifests itself in the heated debate about capital punishment that occurred in London between 1864 and 1868. These debates centered on whether to replace public executions with private ones or to abolish capital punishment altogether (Cooper 123-47). Hardy's apprenticeship at Blomfield's office allowed him to hear many of the Reform League's debates when it met on the lower floor beneath Blomfield's office (*Life* 42-3). Hardy internalized these conversations and debates, storing them away for future use in his prose.

An additional allusion to hangings occurs after Sue journeys to Marygreen following the death of Drusilla Fawley, her aunt and Jude's great-aunt. Sue has married Richard Phillotson, Jude's former teacher, out of conventions' sake, yet she finds physical love "[repugnant]" (*J* 168). Distraught over her situation, Sue has voiced to Jude, her soul-mate, that even "before [she] married him [Phillotson] [she] had never *thought out fully* what marriage meant" and that "one ought to be allowed to undo what one has done so *ignorantly!*" (emphasis added; *J* 170). Within this brief characterization of Sue, Hardy depicts her as Intellect devoid of Passion; she craves companionship but within the bounds of a Platonic rather than physical relationship. For Sue, sex lacks Passion. Married as a response to social pressure and trapped by the convention, Sue believes that her



marriage vows have not only trapped her but that they are strangling her; she experiences no Passion and cannot bear the thought of physical intimacy with her husband. Therefore when both Sue and Jude hear the cry of a rabbit caught in a trap a little later, Jude makes an analogy about an “artificial system of things, under which the normal sex-impulses are turned into devilish domestic gins and springs *to noose* and hold back those who want to progress?” (171-2). In contrast to Sue’s controlling Intellect, Jude’s Passion-ate nature envisions sexual Passion as a noose tightening around one’s neck, leading to a figurative hanging. For Hardy, neither Sue nor Jude possesses a balance among the Passion, the Intellect, and the Will.

Hardy extends the hanging image to Sue’s relationship with Phillotson. Following Druscilla Fawley’s burial, Sue returns home and asks Phillotson for permission to leave him in order to live with Jude (*J* 176-7). After much debate, Phillotson finally agrees (178). That evening, as Phillotson retires, he forgets that he “now [sleeps] on the other side of the house” and he “mechanically [goes] to the room that he and his wife had occupied . . . which since his difference with Sue [has] been hers exclusively” (178). As he begins to undress, he hears a “cry from the bed” and “[perceives] Sue starting up half-awake, staring wildly, and springing out upon the floor on the side away from him, which was towards the window” (178). Sue’s Intellect so fears submitting to Phillotson’s Passion that it prompts her own Passion and Will to act irrationally. Before Phillotson realizes what Sue is doing, she mounts “upon the sill and [leaps] out of the window.” “Horried,” Phillotson runs outside to a “white heap” on the ground which he

carries inside, relieved “she had certainly not broken her neck” (178). This scene recalls Hardy’s witnessing through the telescope the “white figure” drop through the scaffold floor, the view of the hanging that made him wish he “had not been so curious” (*Life* 32-3). Just as the law of Hardy’s youth had caused the death of the “white figure,” so, too, Sue’s irrational Intellect engendered by Passion-ate frigidity causes her desperate act. Social mores and expectations had pressured her into a marriage she would have avoided, and legal constraints bar her from dissolving the union.

Social mores and expectations play an integral role in Hardy’s next near-image of hanging. Jude and Sue, cohabiting without officially being married, have undertaken the care of Jude’s son by Arabella, and they find themselves in need of money. Hired to reletter “the Ten Commandments in a little church,” Jude and Sue work together, with Sue standing on a “safe low *platform* . . . which she was nevertheless timid at *mounting*” (emphasis added; *J* 236). Since society condemns her scandalous lifestyle in living with Jude without benefit of marriage, Hardy places Sue in the position of a convicted criminal by having her “mount” a “platform.” As social outrage grows about the church’s employing of two individuals living together without the benefit of marriage, the contractor fires them yet “[pays them] for the week, all the same” (239). The contractor bows to the church’s demand that he fire Jude and Sue. Even though he regrets his actions, he complies with the edict. Thus Hardy connects personal Intellect submitting to social Intellect born out of unbridled social Passion, outrage. This scene echoes the early episode in the text where Jude, out of Passion, permits

birds to feed off the surplus grain in Farmer Troutham's field. When Troutham discovers what Jude has done, he beats and then fires Jude, yet gives him a full day's pay (14-5). Thus, society maintains order. Social Intellect controls social Passion.

Hardy extends the near-image of hanging when Jude learns of a family secret involving a gibbet. Prior to her death, Jude had asked his great-aunt about the relationship between his father and mother as well as that between his aunt and uncle. Druscilla replied simply that the "Fawleys were not made for wedlock" because "it never seemed to sit well upon [them]" (*J* 58). Furthermore, she tells him that his father and mother parted "a little further on" from the "Brown House," where "a gibbet once stood . . . not onconnected [sic] with [their] history" (58). This revelation about a hanging within Jude's family raises suspicions, but Hardy leaves the question unanswered until almost two hundred pages later. At this point Jude and Sue Bridehead, his cousin, have planned to marry and the Widow Edlin, a family friend, has arrived to witness the ceremony the next day. Sitting beside the fire the night before the wedding, the Widow Edlin recounts the tale of how one of Jude's and Sue's ancestors was hanged for "burglary" after his child had died. Since his wife refused to give him the child's body, he broke into the house "to steal the coffin away; but he was caught, and being *obstinate*, wouldn't tell what he broke in for" (emphasis added; 222). Hardy reveals that overriding Passion, his obstinacy, led to this man's death, again foreshadowing Jude's future.

Hardy has used near-images of hangings to establish the social Intellect as a controlling force throughout the novel. Now he employs an actual hanging to reveal society as judge, jury, and executioner of those who violate its morals and standards. Hardy chooses to include a gruesome scene of murder/suicide of young boys to emphasize the effect of legal and social laws upon individuals. No critic, so far as I have found, considers why Hardy employs a triple hanging that devastates the main characters Jude and Sue. When Father Time, Jude's son, hangs his two half-siblings and then commits suicide by hanging himself (*J* 263-4), he reveals how social prejudices can become the tightening noose around individuals' necks. Because Sue and Jude were never legally married, this young boy continually suffered society's derision. Father Time decides to hang his half-siblings and himself after Sue tells him of the impending birth of another half-sibling, and he witnesses his family being turned out of the rooms they had rented because of Sue's and Jude's illegal relationship. Hardy uses the children's hangings to reveal that an imbalance among the Passion, the Will, and the Intellect affects not only the mature but also the young. Hardy suggests that without morality, without *com*-Passion, social justice destroys as completely as legal justice. For Hardy, then, this scene displays the effects of social justice without morality, without *com*-Passion.

Within the prose of his final years, Hardy uses his concept of moral reasoning to view more critically his society. The ethical dilemmas Victorian society faced in the presence of rapid progress challenged the root of their philosophical beliefs and echoed the struggle among the Intellect, the Passion,

and the Will that Hardy weaves throughout all of his prose. Capital punishment by hanging did not always result from society's legal judgment. With the concurrent murder/suicide of the children, Hardy moves capital punishment from the control of society to the control of the individual. Father Time becomes the judge, jury, and executioner. Hardy's use of children in this act makes capital punishment all the more horrific. Within the last prose period, Hardy narrows his focus to legal issues that clarify his concept of moral reasoning, including burglary, rape, seduction, bigamy, and murder. That Hardy incorporates these issues discreetly within his prose reflects a tightly controlled style, a finely honed treatment of the extenuating circumstances his characters must endure.

Furthermore, Hardy evolves his concept of moral reasoning to include children and their ability to endure the struggles among the Passion, the Intellect, and the Will. In this last phase of his prose writing, Hardy compounds the number of actual and near-hanging images, thus indicating the significant impact of the hangings he witnessed in his youth. Hardy extends his moral reasoning to include social prejudices that act as a hangman's noose for those outside the accepted social mores. In his final novel, Hardy's social commentary pre-dates his 1903 comment on the "moral right of a community to inflict" capital punishment (*Life* 341), implying the morality of the act needed a fuller explanation than he could provide at that time.

## CHAPTER FIVE

### THE VERDICT:

#### THOUGHTS FOR DELIBERATION<sup>12</sup>

By age twenty-three, Hardy gives us a clue, in the form of a notebook entry, of his attitude toward how humans evolve their capacity to balance their Passion, Intellect, and Will with external forces. This study examines how that attitude plays out in his novels, short stories, and prose pieces. To demonstrate the progression of his thoughts, I have looked at elements of the law as they intermix with his use of an earlier experience as a witness of two hangings. His writing contains actions and images that pattern the progression of his thoughts. As he writes his early works between the ages of twenty-five and thirty-six, Hardy reveals an eagerness to incorporate as many legal issues as possible into his fiction. With his first sketch, Hardy combines what will become the major interests of his fiction, moral reasoning and the law. Though written only as an exercise, "How I Built Myself a House" reveals skeletal outlines not only of his concept of moral reasoning but also of legal conflicts and hanging images seen in his later works. Hardy reveals the conflict between the personal Intellect and Passion (the husband and wife) as well as the conflict between the personal Intellect and the social Intellect (the architect). This humorous piece

acknowledges Hardy's reading of Fourier (the facets of moral reasoning) as well as Hardy's interest in the law (the contract between the homeowner and the architect). With this short piece as a beginning, Hardy blends the law into his plots with fervor, his Passion to make a living as a writer overcoming any objections his Intellect may have raised. His pattern for using moral reasoning and hanging images to create social commentary has begun.

As a hungry author searching for a plot, Hardy willingly uses any method of plot development that will assure him an audience, and he continues his pattern of moral reasoning and hanging images into his novels. Drawing upon his knowledge of popular literature of the time, Hardy mimics the use of melodramatic plots and hidden identities in his first novel *Desperate Remedies*. What his imitation of these plot devices also affords him is a means of addressing social issues that he finds morally objectionable, namely the manipulation of the law, either by an individual or by society. He includes numerous examples within the text that revolve around legal entanglements such as inheritance, employment, blackmail, contract law, identity theft, bigamy, and murder without focusing predominantly on any one aspect. As he moves into his next period, Hardy finds the facet of the law that will provide him with the most opportunity for examining moral reasoning, marital law. While he chooses laws surrounding male/female relationships as his primary vehicle for plot development and social commentary, Hardy recognizes that other areas of law affect human relationships in significant ways; he uses these laws to reveal his concept of moral reasoning that he develops into the major thrust of his prose.

The conflicts that arise out of human relationships afford Hardy a way to reveal the struggles individuals have with their Passions, Intellects, and Wills. Hardy maintains that so long as Intellect, Passion, and Will remain separate entities within one structure or if they succumb to their monstrous bases, moral harmony cannot be accomplished. Hardy sees the combination of the three as the only means of achieving moral harmony. At the same time, Hardy subconsciously includes near-images of the hangings of Martha Browne and James Seale. Witnessing these two hangings haunts Hardy for the rest of his life. Unable to reconcile the vivid images of the events surrounding their deaths with his concept of moral reasoning, Hardy subconsciously includes hanging and near-hanging images within his texts as a cathartic release. These early novels form the foundation of his pattern, linking his concept of moral reasoning to his growing disdain for capital punishment.

From thirty-seven until fifty, Hardy has subordinated his overt use of law in his novels, focusing instead upon character study. After his hiatus from writing, Hardy buries his legal conflicts within character studies. He has learned from his early writings that law exists; what makes an interesting story is how characters react to its intrusiveness. Consequently Hardy moves his overt criticism of the law, especially capital punishment, from his novels into his short stories, where the impact makes a stronger statement because of the brevity of the work and the concentration of details. Hardy now chooses to focus subtly on laws surrounding male/female relationships to guide his novels, allowing other legal entanglements to hinder his characters as they struggle with their Passions,



Intellects, and Wills. As Hardy continues writing about the struggles in human relationships, he more clearly defines his concept of moral reasoning, showing human and social failures when no balance exists among the three elements. Hardy, through his short stories, portrays his disdain for capital punishment more strongly during this period. Though his satiric portrayal of the Victorian legal system, Hardy states his case clearly but cautiously; he has become, after all, a magistrate during these years and must uphold the very system he satirizes. Within his own life, Hardy struggles with the morality of the law, penning the quotation at the beginning of this study "If Law itself had consciousness, how the aspect of its creatures would terrify it, fill it with remorse!" (*Life* 341). His social commentary against the inhumanity of society's application of the law arises directly from the struggles between the Passion and the Intellect for control of the Will. He continues his pattern of moral reasoning and the denunciation of the law as he moves through his final prose period.

By the age of fifty-one to fifty-eight, Hardy views his society more critically through his concept of moral reasoning. His two novels of this period revolve around the struggle of an individual to survive within a relationship or society that does not want them. Just as Angel abandons Tess, society with its prejudices abandons Jude. In fact, Hardy consciously states that *Jude* is a moral tale that illustrates the struggle "between the flesh and the spirit" (*J* 5), and his pattern of moral reasoning reaches its fullest application within this work. Hardy moves the struggle between the Passion and the Intellect to encompass children, those whom families and society are charged to protect. In his final novel, Hardy's

social commentary both affirms and pre-dates his 1903 questioning of the “moral right of a community to inflict” capital punishment (*Life* 341). With the brutality of the murder/suicide of the children by a child, Hardy’s commentary becomes completely interwoven with his witnessing of the hangings as a young man. With one horrific act, Hardy pleads with humanity for a balance within individuals and within society (the Law). His plea for *com*-Passion to temper the Intellect creates a lasting image upon his readers. Whereas in his early and middle years, Hardy avoided providing specific details about death by hanging, his development as a writer and as a magistrate allows him to recreate the horror of those hanging images within his works. Now he includes the hanging to graphically illustrate his aversion to capital punishment, whether inflicted through legal means or through social castigation. Society and children now act as judge, jury and executioner.

This study of Hardy’s use of law within his prose has illumined Hardy’s concept of moral reasoning and has suggested his subtle argument for the abolition of capital punishment; however, much more remains to be investigated. Certainly the most obvious area for further research would be a companion study to this concentrating on Hardy’s poetry and *The Dynasts*. Another obvious venue for additional Hardy research lies in a study of the social theorists and philosophers Hardy read other than Fourier. Another area that could further define Hardy’s stance on capital punishment would be a detailed review of the gallows literature and broadsheets of the Victorian Era, especially those from 1840 through 1868, the dates of Hardy’s birth through the end of public executions. Many writers took a stand against both public executions and

executions in general, including Dickens, Thackeray and Swinburne. Hardy admits to reading Thackeray but knowing the articles that appeared in the gallows literature, the weekly newspapers, and the broadsheets could better establish what influence these periodicals had upon a maturing, impressionable Hardy. Certainly Hardy's *Literary Notebooks III* would provide another scholar with ample material, looking for connections between Hardy's entries, his works, and his social philosophy. Breach of promise as presented both overtly and subtly by Thomas Hardy affords another area for additional research. While Davis has concentrated upon the marital laws, he has neglected breach of promise.

Additional avenues for research lie in the legal language Hardy employs in non-legal situations. The Hyper-Concordance linked to the Victorian Web would prove an excellent starting point for such a study of how Hardy used legal terminology. While scholars have studied Hardy's use of artistic, Biblical and mythological allusions, an interesting study might concern his repeated use of the allusion to Belshazzar's feast that involves an application of Biblical justice. In the course of my research, I discovered that Hardy employs the same allusion at least three different times. It would prove interesting to see how many more times he employed the same allusion and if it always involved a legal situation.

This study used Hardy's interest in the law to explore and understand his concept of moral reasoning and his attitude toward capital punishment. Beginning with his earliest sketch and culminating with his last novel, this work has traced not only Hardy's growth as a writer but also as an advocate for moral

reasoning within individuals and within society, especially as it relates to capital punishment. Hardy's writing reflects growth as he struggled with his own Passion and Intellect. He tempered his early desire for publication with his later desire for social improvement, using his novels as the vehicle for change. That Hardy has been overlooked as a critic of Victorian society remains a mystery. Perhaps this is so because his views about moral reasoning, social justice, and capital punishment anticipate the twentieth century. His changing society forced him to adapt his thinking, stretching beyond the Victorian Era. Though he only revised and edited prose works after the publication of *Jude*, Hardy's prose, when read with an historical and cultural eye, reveal him as a social critic bridging the years between the nineteenth and the twentieth centuries.

## NOTES

- 1 All jurors in either a civil or criminal case must struggle with their own personal Passions, Intellects, and Wills as society asks them if they can apply the law equitably. Hardy questions if not only personal but also social struggles with the Passion, the Intellect, and the Will affect the application of justice.
- 2 For the phrase “moral reasoning,” I am indebted to Donald Joyce, O.M.I., Director of Libraries at Oblate School of Theology, San Antonio, Texas. He was kind enough to explain the three abstract principles (active, passive, and neutral), which Hardy seems to have gleaned from his reading of François Marie Charles Fourier (*LN* 1:240-1).
- 3 All quotations for the analysis of Hardy’s diagrams originate in the sketches themselves as represented in *Literary Notebooks* Volume 1, which can be seen in Figure 2 of this study.
- 4 In the opening arguments of a trial, the attorneys for both sides present the facts shaped to the benefit of their respective clients, who may be separate individuals or society. Hardy’s early works shape his views about the law’s application.
- 5 I deliberately isolate the term “Passion” as it appears in words we commonly use (i.e., compassion, dispassionate, impassioned) to

emphasize Hardy's concept of moral reasoning. This stylistic choice will be mirrored throughout the rest of this study, at times reflecting the same choice with the term "Intellect."

- 6 In *Promises Broken: Courtship, Class, and Gender in Victorian England*, Frost analyzes the cases filed for breach of promise to assess the attitudes of a society toward courtship, engagement, and marriage because they provide an avenue to evaluate the class and gender distinctions of the time period (9). She contends the fictitious view of breach of promise presented—from Dickens' *The Pickwick Papers* to Gilbert and Sullivan's *Trial by Jury*—has been negative: the plaintiffs never need the award of damages and are presented as "vindictive, mercenary, and scheming" while the defendants are portrayed as the "victims." At no time do the plaintiffs in these fictions suffer significantly from their losses—no long engagements occur, no virginity lost, no jobs lost or situations compromised, no schooling abandoned (7). In short, the plaintiffs, usually women, suffer very little, if at all, because of the breach of promise. Frost further contends the "idealized myth of breach of promise" significantly affected the public's "perception of the suit far more than actual cases" tried in the courts (1). The actual cases, unfortunately, more accurately depicted the opposite consequences—engagements were often long, sexual intimacy was often a factor (sometimes resulting in illegitimate children), jobs and schooling were often abandoned. Surprisingly,

single women who sued for breach of promise were afforded more rights in the courts than a woman after she married and had become the property of her husband. Women who brought the suits generally received the support of the court, if they played the “victimized heroine” well (9). Hardy, recognizing public perception as an external Intellect that shapes the Law, employs both versions of breach of promise in *Far From the Madding Crowd*, juxtaposing his “idealized myth” surrounding Bathsheba Everdene and Farmer Boldwood with his “actual case” involving Fanny Robin, one of Bathsheba’s servants, and Sergeant Troy, who later becomes Bathsheba’s husband. Thus he highlights the tragedy of the latter victims. Though both cases reflect the struggle between Passion and Intellect, I examine only Bathsheba and Farmer Boldwood’s breach of promise as it allows Hardy to include his hanging motif as well.

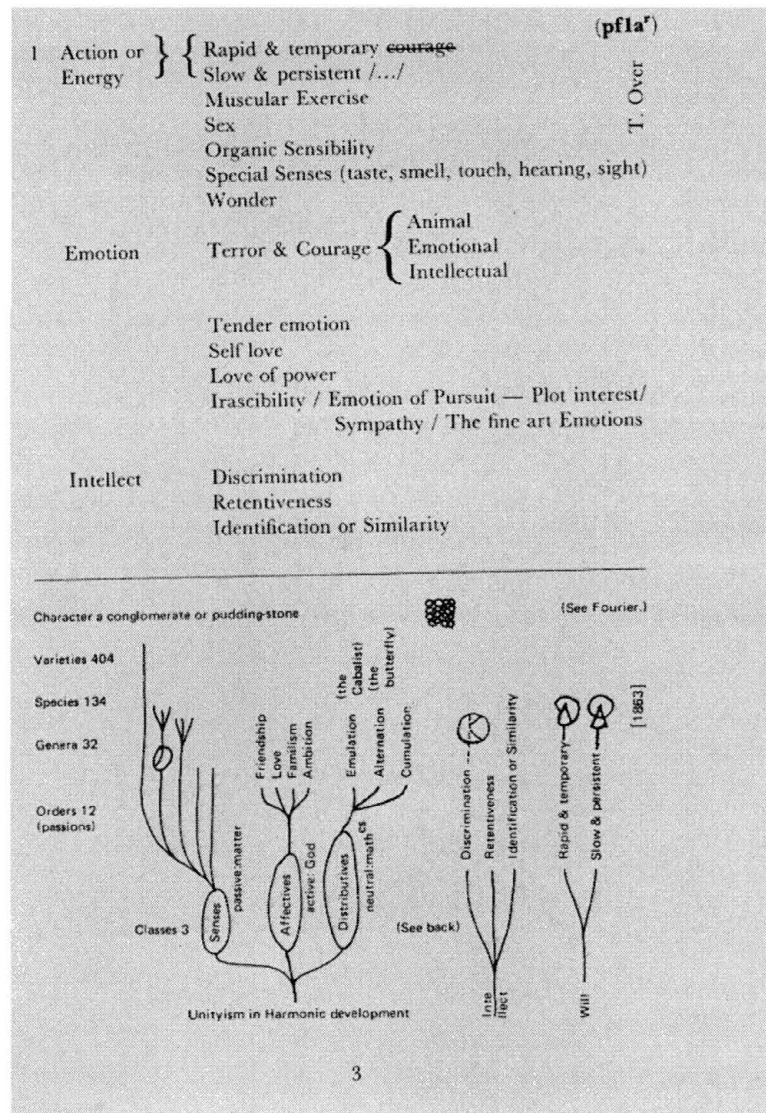
- 7 Just as attorneys elicit evidence to support their positions during the direct examination phase of questioning, Hardy’s middle works reflect evidence to lay the foundation for his later condemnation of capital punishment.
- 8 Cooper relates that Calcraft, the public executioner at the time of Hardy’s story, probably allowed “superstitious persons” to “touch the hand of a hanged man” to rid themselves of warts (22). Calcraft, of course, probably also charged a fee for this service to supplement his income (22).

- 9 Hardy uses this opportunity to depict an historical fact; the rope with which a criminal had been hanged “could be sold for as much as five shillings an inch” (Cooper 22).
- 10 Edward Gibbon Wakefield reports from first-hand observation behind the walls of Newgate Prison: “My strongest sentiment on these occasions was one of anger . . . of the sort of anger, which is commonly produced by watching gross injustice [emphasis added]. One sees twenty-five fellow creatures, who yesterday were all under sentence of death—twenty of them are saved and five are utterly condemned. Are the five the most guilty? By no means” (qtd. in Gattrell *The Hanging Tree* 42-3).
- 11 In the closing arguments of a trial, attorneys make a final plea to sway the jurors’ opinions in favor of their respective clients. Hardy pleads for humanity to maintain a balance among the Passion, the Intellect, and the Will in its application of justice.



FIGURE 1

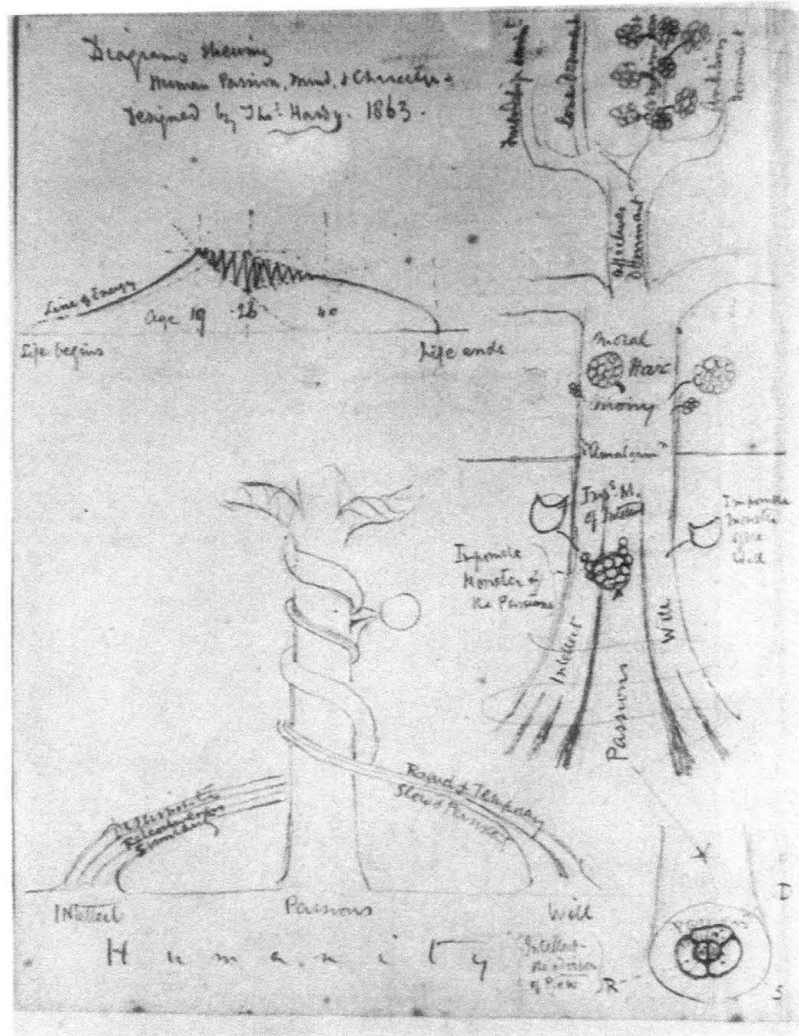
FIRST PAGE OF HARDY'S LITERARY NOTEBOOK, VOLUME 1



Lennart Bjork's *The Literary Notebooks of Thomas Hardy*, Volume 1, 1985, Macmillan, reproduced with permission of Palgrave Macmillan.

FIGURE 2

SECOND PAGE OF HARDY'S LITERARY NOTEBOOK, VOLUME 1



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## VITA

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