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Subversion and Sympathy

GENDER, LAW, AND THE BRITISH NOVEL

Edited by Martha C. Nussbaum and Alison L. LaCroix
“Jeanie, they say ane shouldna aye take a woman at her first word?”
“Ay, but ye maun take me at mine, Laird,” said Jeanie, looking on the ground, and walking on without a pause.—“I hae but ae word to bestow on any body, and that’s aye a true ane.”
“Then,” said Dumbiedikes, “at least yeuldna aye take a man at his first word.”

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Pious Perjury in Scott’s The Heart of Midlothian

Julia Simon-Kerr

In 1818, just months before the death of the great English law reformer, Samuel Romilly, Sir Walter Scott, the Scottish novelist, poet, and lawyer, wrote The Heart of Midlothian, his first novel with a female protagonist. The work centers around Jeanie Deans, a woman who must decide whether or not to tell a lie in court to save her sister’s life. Effie Deans has been accused of murdering her child, and if Jeanie will swear to an untruth, namely, that her sister told her of the pregnancy, the court will acquit Effie of murder. Jeanie’s decision not to perjure herself, and her subsequent walk from Edinburgh to London to secure a pardon for Effie, are at the dramatic core of the novel.

With a heroine whose truth telling is public, who is not motivated by her relationships with men, and who sparks a heroic journey to seek freedom for a wrongly condemned woman, The Heart of Midlothian embodies a vision of women’s honor that contrasts strikingly with other novelistic depictions of women in the early nineteenth century, which focused on women’s agency in the home and their integrity defined as sexual purity. At the same time, Jeanie Deans’s public truth telling challenges a male world of justice that, as Romilly spent a decade arguing in parliament, has come to rely on lying to mitigate harsh sentences. By creating a heroine whose major strength is her truthfulness in a public realm, Scott intervenes both in the novelistic tradition of female heroism and in the contemporary discourse on law reform.

That Scott’s novel is overtly concerned with justice becomes clear well before he introduces his heroine. In the first eight chapters, Scott creates a portrait of the legal
system as he describes the events leading up to the 1736 Porteous riots in Edinburgh, a popular uprising sparked by the pardon of John Porteous, a Scottish Guardsmen convicted of murdering innocent bystanders protesting the execution of a popular smuggler. That plot serves to delineate the world of harsh justice in which Jeanie finds herself. As others have described, it was a world in which individual culpability or motive mattered little, royal mercy was preeminent, and death was the ubiquitous punishment for crime, particularly when the crime threatened property. Instead of the modern concept that we should primarily punish those whose state of mind makes them responsible for their crimes, the British criminal law focused on external markers of character. As a result, “those with bad reputations were much more likely to be prosecuted and almost certain to be convicted.” At the same time, an elaborate set of procedural rules maintained the apparent impartial rigidity of the law itself, occasionally leading to convictions of those higher on the social ladder, such as Captain Porteous. Royal mercy could then be used to show the quasi-divine, life-giving power of the sovereign.

While Scott’s introduction creates a background to the complex system, the story of his heroine, Jeanie Deans, offers a deeper critique, which will be the subject of this chapter. Jeanie’s choice to tell the truth, not surprisingly, has provoked much debate in the literature. Scholars have argued, among other things, that she is simply a “peasant heroine who symbolises the national spirit of her race, rank and time,” or that, through Jeanie’s character, the novel should be understood to “form an integrated picture of the justice of God on earth.” Others have argued that the novel represents different forms of law, such as the democratic will of the people, the strict letter of the law, and the law of royal prerogative, and that it exposes the “dangers and limitations of each,” concluding with a vision of middle-class life in which the coercive power of the prison is located in the home. Still others, led by Georg Lukács, have argued that the novel forms part of Scott’s historical novel tradition designed to show the latent heroism in all of us through a heroine whose greatness emerges in response to a crisis of history and then recedes.

This literature has overlooked two points that reveal a more nuanced reading of the novel as a meditation on gender, honor, and law reform. First, Jeanie’s truth telling is remarkable not simply because the tradeoff between risking life and preserving her own integrity is such a fraught one but also because it sets her apart from the discourse on female honor of Scott’s day. As a woman who is not “made honest” by a man, but rather whose honesty is grounded in her religious beliefs, Jeanie’s character contrasts starkly with contemporary discourse on female ethics in novels, conduct books and works of political and moral philosophers. The discourse did not involve public truth telling and instead equated female honor and honesty with chastity, reputation for purity, and fidelity to a husband. Furthermore, as Nicola
Lacey has described, women's active agency and self-determinism were in serious decline in the early nineteenth century, when "Austen's would-be home-maker" replaced "Defoe's she-merchant" as the novelistic object. By contrast, Jeanie represents a remarkable amalgamation of homemaker and revolutionary, a woman whose virtue makes her powerful, but whose actions are public, defy male pressure, and do not turn on sexual morality.

What has also been overlooked is that Jeannie's decision to tell the truth takes place in a male world that pressures her to lie, and that such lying was a practice routinely used in the eighteenth century justice system to mitigate the severity of its criminal laws. Dubbed "pious perjury" by William Blackstone, witnesses—and even more commonly juries—often violated their oaths in order to avoid imposition of the death penalty that attached to a wide range of crimes under English criminal law of the era. Indeed, the practice was so common that it formed a central piece of the argument for law reform during the period when Scott was writing *The Heart of Midlothian*. So many juries were mitigating sentences or freeing criminals entirely through pious perjury that, the reformers argued, the laws were being grossly under-enforced. True to this reality, the men around Jeanie Deans, and particularly the repeat players in the system, argue forcefully that she should lie to save her sister.

Against this background, Jeannie's decision to tell the truth is not the obedient act of a conformist, as Carolyn Austin has argued, but the act of an independent outsider who declines to follow accepted community mores. As a woman who resists male pressure to violate the sanctity of the oath, Jeanie is uniquely qualified to expose the corruption of a system that relies on selective untruth to sustain itself. Her closest novelistic model, and one that Scott overtly harnesses, is that of the domestic heroine, a woman who guides men through her moral virtue. When she enters the courtroom and refuses to lie, Jeanie challenges the way that the male world has used the lie to escape the consequences of a system of inexact conceptions of guilt and excessive punishments. Her story is thus, in addition to being a tale of individual heroism, stubborn ignorance, or religious devotion, a rejection of one way in which actors in the eighteenth-century legal system consistently corrected for the harshness of the law.

Significantly, Scott's novel ignores the possibility that Jeanie has solved her moral dilemma incorrectly by refusing to violate her oath to save her sister. Instead, it portrays the essence of Jeanie's heroism as her unwavering insistence on truth telling. In some ways, then, Jeanie may be seen as an absolutist for truth in the Kantian sense, someone whose very selfhood is tied to fidelity to her oath even if it means sacrificing her sister to a murderous law. And, just as Kant has been resoundingly criticized for his ethic of truth, Jeanie's stubborn focus on the supremacy of the truth above all other considerations can be condemned as morally shortsighted and naively
obedient to a system that relied on procedural rigidity, harsh punishment, and the power of the pardon to maintain its authority. The pardon power, in particular, “allowed the rulers of England to make the courts a selective instrument of class justice, yet simultaneously to proclaim the law’s incorruptible impartiality, and absolute determinacy.” By refusing to break her oath, Jeanie arguably fails to pose any serious challenge to the unjust law that placed Effie in peril and merely reinforces the notion that the royal pardon is the correct locus of moral decision making in the system, and by extension, its hierarchical power structure.

Yet such a reading ignores the debate over pious perjury that was being waged as Scott wrote the novel. By refusing to commit pious perjury, Jeanie exposes the unfairness of the infanticide law and forces the actors in the system to confront its harsh consequences. Faced with Effie's unjust death sentence, Scott portrays the men who would have used lies to avoid such an outcome as ineffective when stripped of the option of deceit. In contrast to the men around her, Jeanie is the only character who still believes in her ability to save Effie. Accordingly, she takes action and secures the necessary pardon, seizing the authority of the domestic heroines of her day to set a moral example and achieve a form of public justice.

I. PIOUS PERJURY AND THE LAW

“They would not convict on the statute, and found the prisoner not guilty, and the judge approved their verdict”

Just how routine the practice of lying to mitigate an overly harsh punishment was during the eighteenth and early nineteenth centuries has been a little-remarked aspect of the legal history that informed The Heart of Midlothian. Yet, the practice was common, and it figured significantly in law reform debates that were current when Scott was writing the book. English criminal law in this period prescribed the death penalty for a wide range of crimes, many of them petty. Beginning in 1808 and led by the English reformer Samuel Romilly, critics of these disproportionate punishments began a systematic campaign to limit the death penalty to the most serious crimes. Romilly's efforts met with only limited legislative success in his lifetime, but by the time of his death in 1818, several months after the publication of The Heart of Midlothian, he had succeeded in awakening public opinion to the “inordinate number of statutes imposing capital punishment” and the “widespread disinclination to put these statutes fully into effect.” Lying in court was a central means by which jurors and witnesses expressed that disinclination. Law reformers decried the practice, and some criticized the seeming imprimitur lent it by Blackstone's term “pious perjury.”
Blackstone coined the phrase in the first edition of his *Commentaries*, published in the 1760s, to describe a form of jury nullification. As Blackstone explained, juries confronted with mandatory death sentences for seemingly trivial crimes would falsify the facts they were asked to find in order to save the accused from the death penalty. In reality, however, pious perjury in its broadest sense seems to have been practiced by judges and witnesses as well as jurors. In a speech to the House of Lords in 1811, for example, Sir John Newport argued that the overcapitalization of crimes meant that “[w]itnesses and juries, rather than violate their kind feelings, violate their oaths: and the judges themselves cannot permit the law to take its course.”

With his term “pious perjury,” Blackstone not only named a ubiquitous practice but also appeared to condone perjury in appropriate circumstances. In his Commentaries, he gave a hypothetical grand larceny prosecution as an example of when pious perjury might be practiced. Grand larceny was defined as “stealing above the value of twelvepence.” Unlike petit larceny, which under statute was punishable by transportation, grand larceny was punishable by death. Because the twelve pence threshold for grand larceny originated in the tenth century, it was not an uncommon observation that, “considering the great intermediate alteration in the price or denomination of money... while every thing else was risen in its nominal value, and become dearer, the life of man had continually grown cheaper.” As Blackstone described it, juries, squeamish at the idea of sentencing their compatriots to die for so little, would “strain a point, and bring in larceny to be under the value of twelvepence, when it is really of much greater value.” Such “straining” was, in effect, perjury when jurors were sworn to give “a true... verdict, so help you God.”

Picking up on Blackstone’s explanation of pious perjury, Romilly refers to Blackstone as a “high author[ity] in justification of [pious perjury]” who found it “justifiable and proper” when it served to modernize the amounts over which stealing became a capital offense. Francis Jeffrey, an Edinburgh lawyer and correspondent of Scott’s, told the jury in a much-publicized dueling case, “these practices, irregular as they are, have received an extraordinary sanction, the way they are spoken of, by the great and most popular writer on the law of England—I mean Blackstone.”

In 1827, Bentham agreed with this assessment when he wrote scathingly that Blackstone had chosen his oxymoronic words with care in order to “reconcile to the practice those pious persons, who, looking down upon morality, look up only to piety, as that in comparison of which all other objects are unworthy of regard.” Such reconciliation was important during a time in which moral theology was still a dominant force in the minds of jurors. It was also necessary because perjury itself, although not a capital offense, was criminal. Although Blackstone could have called the practice “humane” or “moral” perjury and thereby avoided the “flat contradiction in terms,” calling it “pious” gave the greatest sanction to it.
Blackstone, so far as can be ascertained from his lone editorial remark on the subject, appears to have viewed pious perjury as signaling a problem with the law and not with the perjurers. "Pious perjury," he wrote, "does not at all excuse our common law... from the imputation of severity, but rather strongly confesses the charge." Reformers would take up that observation and make it a central tenet of the argument for eliminating capital punishment for crimes of property. Romilly, a man Scott admired for his efforts to "infuse into the more antiquated and barbarous parts of the English code some portion of the science and refinement which characterizes the present age," mentioned pious perjury in his very first speech on reform of the criminal code in 1808. "Juries," he told the House of Commons, "are placed in the painful situation of violating one of two duties: they are reduced to the alternative of violating their oaths, or what they are sometimes mistakenly induced to think more binding on them—the dictates of humanity." In this way, Romilly argued, the law "defeats its own ends, and becomes the abettor of its own violation."

Speaking in 1811 in support of one of Romilly's bills to repeal the death penalty for various crimes of theft, Lord Holland, a prominent Whig member of the House of Lords, built his argument around pious perjury. "Juries have not unfrequently been known to commit what has been termed a pious perjury rather than leave the prisoner to the hazard of capital punishment," he began. As an example, he told the story of a woman "indicted for stealing a £10 note in a dwelling house: the note was found upon her, and she stole that sum or she stole nothing." Instead of finding the woman either guilty of stealing ten pounds, or not guilty of the same crime, however, the jury "found her guilty of stealing to the value only of 39s." Such blatant falsification of facts was making punishment for crimes less frequent and eroding the "certainty and regularity which ought always to characterize the laws of a free country." Sir John Newport, as already noted, made a similar point, arguing that the practice of pious perjury was common to witnesses and jurors, and that even judges were complicit. Not surprisingly, one of Romilly's main adversaries in the drive for reform, Sir William Garrow, an influential barrister and member of parliament, is identified by his biographers as having used his skill at cross-examination to "uncover circumstantial information that motivated juries to bend the rules and reduce the severity of punishment," in other words, to commit pious perjury.

Romilly's reform efforts, although largely unavailing during his lifetime, gained support after his death. In 1821, in a speech to the House of Commons, Sir Thomas Fowell Buxton argued that the "perjury of jurymen" is one "price we pay" for the current mode of capital punishment. He went on to read from among twelve hundred examples of instances in which juries had reduced the value of the good stolen to avoid the mandatory capital punishment for grand larceny. He included a range of other anecdotes suggesting the extent to which perjury was commonplace. One
anecdote, in particular, shows how, even after a guilty jury verdict, an entire assemblage of magistrates and judges conspired to avoid imposing the death penalty on a man who had stolen a pair of leather breeches:

The evidence was clear, and his guilt was manifest; the Jury brought him in guilty; and the Magistrates were going to pronounce upon him sentence of imprisonment, when the Clerk informed them, that the offence was capital, and that therefore they must proceed to pronounce sentence of death. This information threw these respectable Magistrates into the utmost confusion and dismay. What was to be done? was a question which all asked, and none could answer. One advised the insertion of Not before the word Guilty: Another thought it would be more regular to turn the prisoner loose, and say no more about the matter. At length, it was determined to adjourn the Court, and to send a deputation over to a Mr. Willard, a gentleman, I presume, very learned in the law, to beg his counsel in so desperate an emergency. It so happened, that the Lord Chief Baron and another of the Judges were dining with Mr. Willard, when this strange embassy introduced themselves. When their melancholy case was stated, the Chief Baron said, that the best way would be to insert after the word “Guilty,” the words “Of Manslaughter.” The deputation were delighted with so ingenious an expedient – returned in triumph – and I am misinformed if it does not appear by the records of this respectable borough, that the man was tried for stealing breeches, and convicted of Manslaughter.40

Buxton concluded, “when the public see twelve respectable men—in open court—in the face of day—the presence of a judge—calling God to witness, that they will give their verdict according to the evidence, and then declaring things, not very strange, or uncommon, but actually physical impossibilities, absolute miracles…what impression on the public mind must be made, if not this—that there are occasions, in which it is not only lawful, but commendable, to call God to witness palpable and egregious falsehood.”41

Although Buxton, by his own acknowledgment, did not survey all “of England, all Ireland, and all Scotland,” we need look no farther than to Scott’s correspondent, the attorney Mr. Jeffrey, to find that four years after the publication of The Heart of Midlothian this accomplished advocate was arguing to a Scottish jury in the trial of Mr. Stuart that it would be commendable to call God to witness a falsehood, if it was in a good and pious cause. Jeffrey explained “pious perjury” is “quite familiar, done daily with the acquiescence of courts, and neither entailing reproach on juries among their neighbors, nor exposing them to the censure of their legal superiors.”42

Remarkably, the example Mr. Jeffrey then invoked of pious perjury “in our own
practice” was none other than the infanticide statute under which Effie Deans had been prosecuted. Jeffrey told the jury:

Many convictions were got under this statute. But as a number of cases arose, where, from false modesty, accident, or otherwise, all these supposed infallible criteria [of the presumption] concurred, without the guilt of murder having existed, Juries came to boggle at such an enactment; and, accordingly, it was abrogated by their uniform refusal to execute it. All our late writers distinctly say, that of late years, no convictions could be obtained under that statute. Nay, I remember myself, in the early part of my practice, of two cases where the statute was libelled on, in one of which the jury stated, that they would not convict on the statute, and found the prisoner not guilty, and the judge approved their verdict. And in another case, I remember a Depute-Advocate was reproved for bringing such a case to trial, and the judge told him plainly, that if he did proceed on that statute, he would take care there should be an acquittal.43

Jeffrey thus invoked pious perjury as a practice that not only saved petty criminals from death sentences but also prevented the conviction of those who were actually innocent. Rather than mitigating the punishment for theft, pious perjury here was the means of modifying a flawed and unfair law that had the tendency to produce convictions without guilt. Although he then called on the jury to “give in a verdict of no untruth,” the clear thrust of Jeffrey’s argument was that truth must sometimes be sacrificed in order to avoid injustice. Although it seems likely that many in his audience had read The Heart of Midlothian (juries were drawn from the well-educated, novel-reading class, the novel was a best seller, and its author was at the height of his fame in Edinburgh), Jeffrey does not mention the novel in his discussion of infanticide. For it is precisely Jeffrey’s argument, that the truth must sometimes be bent to prevent injustice, that Jeanie Deans faces and rejects in the novel.

II. PIous PERJURY IN THE NOVEL

“Save your sister from being murdered and them from becoming murderers”

As Jeffrey’s speech makes clear, the infanticide law that Effie Deans is accused of violating formed a particularly noxious element of eighteenth-century Scottish criminal law. Even in the eighteenth century, it was “one of the few [laws] . . . which was framed contrary to the principle of presumption of innocence.”44 Scott explained in a footnote to the 1830 edition of the novel that the infanticide law allowed the accused
woman to be convicted on the basis of "a certain set of presumptions, which, in the absence of direct proof, the jury was directed to receive as evidence of the crime actually having been committed." One of these presumptions, "that [the accused] should have concealed her situation during the whole period of pregnancy," is at the center of Jeanie's ethical crisis. If a woman concealed her pregnancy, did not seek help during the birth, and her infant was missing or found dead, she was presumed to have murdered it. Particularly when combined with the bastardy laws of the era, which punished women for openly bearing illegitimate children, the infanticide law operated to reinforce social norms and hierarchies rather than to identify and punish illegal acts committed with criminal intent.

Jeanie's most practical relative, Mrs. Saddletree, best distills the import of the law as it applied to Effie Deans: "Unless puri Effie has communicated her situation, she'll be hanged by the neck, if the bairn was still-born, or if it be alive at this moment." Of course, fearing the shame and stigma that would accompany such a disclosure, Effie has not told anyone other than her lover, George Staunton, of her condition. She is therefore doomed unless he will testify to that fact or unless someone else will swear, untruthfully, that Effie disclosed her pregnancy. Unfortunately for Effie, George Staunton is a profligate nobleman who, under another name, was involved in the Porteous affair as the convicted smuggler's accomplice. He escaped the smuggler's fate by fleeing, and his appearance in court on behalf of Effie would subject him to immediate arrest and subsequent execution. At this point in the novel, when such a sacrifice is most needed, he is not prepared to offer his own life in exchange for hers.

What George Staunton is prepared to do, however, is to pressure Jeanie to lie in order to help her sister escape conviction of infanticide. As a member of the aristocracy and the associate of criminals, he is aware both of the intricacies of the law and of the common mode for avoiding its extreme consequences. Accordingly, Staunton summons Jeanie to an "ominous and unhallowed spot" behind Salisbury Craggs and threatens her with violence if she does not do what he asks. The unholy location and Staunton's violent and somewhat insane demeanor underscore the moral emptiness of his argument.

After assuring Jeanie that her sister is innocent, Staunton explains how Jeanie herself might be the means of saving Effie's life:

The blow which the law aims cannot be broken by directly encountering it, but it may be turned aside. You saw your sister during the period preceding the birth of her child—what is so natural as that she should have mentioned her condition to you. The doing so would, as their cant goes, take the case from under the statute, for it removes the quality of concealment. I know their jargon, and have
had sad cause to know it; and the quality of concealment is essential to this statutory offence. Nothing is so natural as that Effie should have mentioned her condition to you—think—reflect—I am positive that she did.\(^{50}\)

When Jeanie responds, “she never spoke to me on the subject,” Staunton dismisses this objection. “You must remember… a confession that she had been ruined by a villain…. That is all that is necessary to be said.”\(^{51}\) Jeanie again responds, “with simplicity,” that she cannot remember “that which Effie never told me.”\(^{52}\) Staunton, angered by what he views as Jeanie’s “dull[ness] of apprehension,” grabs her arm.\(^{53}\) He then delivers the classic argument in favor of pious perjury:

You *must* remember that she told you all this, whether she ever said a syllable of it or no. You must repeat this tale, in which there is not falsehood, except in so far as it was not told to you till now, before these Justices—Justiciary—whatever they call their blood-thirsty court, and save your sister from being murdered, and them from becoming murderers. Do not hesitate—I pledge life and salvation, that in saying what I have said, you will only speak the simple truth.\(^{54}\)

Staunton’s argument to Jeanie is the same as Jeffrey’s to the jury in Edinburgh: sometimes a lie is a necessary road to “salvation” when the law would punish wrongly.

Unfortunately for his cause, the problem is not, as Staunton thinks, that Jeanie has not understood him, but that her “judgment was too accurate not to see the sophistry of this argument.” She tells Staunton, “I shall be man-sworn in the very thing in which my testimony is wanted, for it is the concealment for which poor Effie is blamed, and you would make me tell a falsehood anent it.”\(^{55}\) Jeanie’s words are carefully chosen. “Man-sworn” was a synonym for perjured.\(^{56}\) That she does not believe such perjury to be “pious,” despite Staunton’s argument to the contrary, becomes clear in her rejoinder, “[i]t is not man I fear… the God whose name I must call on to witness the truth of what I say, he will know the falsehood.” Whatever the consequences, Jeanie has no doubt that it would be wrong to tell a lie in court to save her sister.

After her encounter with Staunton, as Jeanie contemplates the prospect of a court appearance that would put her to the cruel choice of “sacrificing her sister by telling the truth, or committing perjury in order to save her life,” she again is pressured to lie (or so she believes), this time by her father, Douce Davie. The magistrate in Effie’s case received an anonymous letter—the handiwork of George Staunton—stating that Jeanie had information that could save Effie, and he paid a call on Douce Davie to try to persuade him to allow Jeanie to testify. The request created its own moral dilemma for Douce Davie: a strictly religious man, he was a Cameronian who refused to take oaths under a legal system and government that did not subscribe to the covenants of
his faith. Scott describes Douce Davie’s internal debate as he speaks with the magistrate as a minor echo of Jeanie’s own struggle. It was a “fearful dilemma, in which [Deans] saw, on the one side, a falling off from principle, and, on the other, a scene from which a father’s thoughts could not but turn in shuddering horror.” We learn that “he felt himself called upon by the most powerful motive conceivable, to authorize his daughter’s giving testimony in a court of justice which all who have been since called Cameronians, accounted a step of lamentable and direct defection.”

Thus confronted, however, Douce Davie’s response differs dramatically from that of his daughter. Rather than choose to adhere to his principles, or, alternatively, to decide to sacrifice his religious beliefs to save Effie’s life, he punts and shifts the moral burden to Jeanie. He tells the magistrate:

My daughter Jean may have a light in this subject that is hid frae my auld een—it is laid on her conscience and not on mine—if she hath freedom to gang before this judiciary and hold up her hand for this poor cast-away, surely I will not say she steppeth over her bounds…And IF NOT—God forbid that she should go into defection at bidding of mine! I winna fret the tender conscience of one bairn—no, not to save the life of the other.

In this way, Douce Davie shows himself to be malleable and weak-willed, lacking the ability to make a decision one way or the other about his daughter’s fate. He also emphasizes Jeanie’s own ability to uphold her principles in the face of pressure to bend them to the necessities of her sister’s situation and to the will of the men around her.

When he speaks with her after his conversation with the magistrate, Douce Davie in convoluted language attempts to tell Jeanie that her decision to testify is a matter for her own Christian conscience, but Jeanie, caught up in her own difficulties, misunderstands and believes that he is suggesting that she perjure herself. Jeanie responds by quoting her father the “ninth command—‘Though shalt not bear false witness against thy neighbour.” Douce Davie, now misunderstanding Jeanie, is taken aback:

[I]t seemed to him, as if she, a woman, and a sister, was scarce entitled to be scrupulous upon this occasion, where he, a man, exercised in the testimonies of that testifying period, had given indirect countenance to her following what must have been the natural dictates of her own feelings.

Yet Douce Davie’s exercise “in the testimonies of that testifying period” is precisely what disqualifies him as a moral arbiter in the framework of the novel. He has already bent his principles to permit Jeanie to testify, and it is unclear what he would have
advised had he truly understood Jeanie’s predicament. As a man, he is a part of a system that had come to rely on lies to save itself from barbarity. Jeanie, by contrast, has the luxury of moral clarity. She is not bothered by her father’s scruples about taking the oath, but she can see what the men who seek to guide her cannot, that once the oath is taken, her own integrity should not be sacrificed by breaking her word before God, even to save Effie. Her poignant cry to her father, “we are cruelly sted between God’s laws and man’s laws—What will we do?—What can we do?” shows the intensity of the bind in which she finds herself. Still, throughout her ordeal, Jeanie never thinks of resolving her own difficulty by abandoning the truth.

The pressure on Jeanie to lie continues when she visits her sister in prison. Effie initially castigates Jeanie when she learns that Jeanie could, but will not, save her through a lie. But eventually Effie softens and tells her sister, “God knows, that, in my sober mind, I wadna wuss ony living creature to do a wrang thing to save my life.” Effie’s jailor, Ratcliffe, a former criminal, is not so sympathetic. Scott describes him as a man who had “spent his life in scenes calculated to stifle both conscience and feeling” and who, through his associates and his own experience, was intimate with the legal system.

As she is leaving the prison, Ratcliffe tries to persuade Jeanie to lie to save Effie. His method, like that of Staunton, is to argue that the system is flawed and that lying is a normal practice. “I hope you’ll think better on it,” he tells Jeanie, “and rap an oath for her—deil a hair ill there is in it, if ye are rapping again the crown.” To further his argument, he tells Jeanie the story of a “worthy minister,” a “gude man” who swore a plainly false oath, calling a hogshead full of tobacco the same as the amount that would fill his pipe. Thus, once again, Jeanie is told that perjury is not only not wrong, but can actually be viewed as worthy when the law itself is flawed.

III. PIOUS PERJURY’S WAKE

“I hae but ae word to bestow on ony body, and that’s aye a true ane”

When Jeanie finally appears in court, she has been under almost constant pressure from the men around her to forgo her principles and lie under oath. Indeed, the message that to lie to save her sister from a bad law would be the usual and even the morally correct thing to do has been Jeanie’s only advice leading up to the trial. But when Effie’s lawyer, although suspecting that Jeanie has come to testify falsely that Effie told her of her pregnancy, leads her to the point of making such a declaration in court, Jeanie responds with total honesty, “Alack! Alack! She never breathed word to me about it.”
Jeanie thus rejects the expedient choice of saving her sister’s life through a lie. It is a decision that preserves the procedural integrity of the legal system, even as it forces the court to confront the brutality of the law. To the extent that pious perjury was a mechanism that preserved the system by mitigating its extremes, Jeanie’s refusal to conform by lying forces the court to face those extremes. When Jeanie rejects pious perjury and upholds the sanctity of the oath, she places the burden on the judge and jury to convict Effie. That pressure exposes, but does not necessarily condemn, the brutal, formalistic and non-truth-seeking qualities of the eighteenth-century legal system. After all, the tale is told in the context of a system that is meant to inspire fear and awe while at the same time employing arcane and highly formal rules that provide a gloss of impartiality.\(^\text{69}\) In a statement read to the court, Effie has poignantly denied killing her child, but she has also sinned against popular morality and shown herself to be of flawed character.\(^\text{70}\) It is clear that no one in the courtroom wishes her to die, but also clear that the letter of the law requires that she be sentenced to death. Douglas Hay invokes a similar scene as an illustration of the law’s majesty, in which a judge who had pressured the jury to condemn a girl to death for infanticide then “expressed the helplessness of men before [the law],” crying while he did so.\(^\text{71}\)

In Scott’s novel, after Jeanie has testified, the judge gives a charge to the jury that emphasizes the importance of obedience to the law, even as it acknowledges its harshness. In tacit recognition of the routine practice of pious perjury, the judge reminds the jury of their duty to uphold the law. Portraying the law as a system not meant to be probed by the common man, the judge tells the jury that the infanticide law was “instituted by the wisdom of their fathers” and that “when it was found too severe for its purpose, it would doubtless be altered by the wisdom of the legislature.”\(^\text{72}\) He emphasizes that he and they “were sworn to judge according to the laws as they stood, not to criticize, or to evade, or even to justify them.”\(^\text{73}\) The law must be carried out to the letter because it “was the law of the land, the rule of the court, and, according to the oath which they had taken, it must be that of the jury.”\(^\text{74}\)

Although at the end of his charge, the judge acknowledges that he would be glad not to impose the death penalty should the jury acquit Effie, his message is clear. Because “[a]ll the requisites of the case required by the statute were…before the jury,” there was no alternative but to convict her.\(^\text{75}\) The law’s mandate must be carried out if its elements have been met, no matter the jury’s opinion of Effie’s actual guilt.

In contrast to the practice of pious perjury that so motivated the law reformers of Scott’s day, the judge articulates an idealistic message about the rule of law. He tells Effie that, whether or not she killed her child, she has been condemned under a “wisely severe” law that was designed to deter her and others from the kind of
concealment that leads to "the death of the helpless creature, for whose life you neglected to provide." He suggests that she make her peace with God and let her mind "be prepared for repentance." The judge even forecloses the idea of sovereign mercy. He tells the jury that he has "not the least hope of a pardon being granted in the present case." Effie will therefore die in the interest of social control of women who become pregnant out of wedlock. In the wake of Jeanie’s truthful testimony, the judge, who before the trial tried to help Effie, now has nothing more to offer her.

Effie’s death is not the morally correct outcome for the novel, however. (Scott’s plot arc, which eventually condemns her to be unhappily married and then retired to a convent, makes that plain.) And just as Jeanie Deans alone refused to tell an expedient lie in violation of her oath, she is the sole character who refuses to let “justice” be defined by her sister’s death. Despite the judge’s words, she tells Ratcliffe at the jail, “[m]y sister shall come out in the face of the sun…. I will go to London, and beg her pardon from the king and queen… they will pardon her—they shall pardon her—and they will win a thousand hearts by it.” The same belief in her God and in her own principles, which prevented Jeanie from lying, now compels her to act on the possibility of saving her sister.

By contrast, after Effie’s trial, the men who would have been expected to save her (her lover, her father, and even Jeanie’s own fiancé) become incapacitated by anxiety or misplaced heroics. The other men around Jeanie, the jailor Ratcliffe and her rich suitor, Lord Dumbiedikes, are awed by her strength into offering her what assistance they can. Jeanie thus becomes, paradoxically, an active leader of men in the public world as she journeys to London to seek a royal pardon. That paradox, and the way in which Scott dramatizes it by feminizing all of the male characters who would ordinarily be expected to rescue Effie, suggest that Jeanie’s rejection of pious perjury should not be read simply as a message about the oath’s crucial role at the center of a legitimate legal system. Rather, by becoming the only character to act on behalf of Effie once she is convicted, Jeanie shows that the male world of the law is morally bereft on a larger scale. Jeanie illustrates Hannah Arendt’s insight that, although lying is generally a more powerful political power than truth, “[w]here everybody lies about everything of importance, the truth-teller, whether he knows it or not, has begun to act: he too has engaged himself in political business, for, in the unlikely event that he survives, he has made a start toward changing the world.”

The first evidence of Jeanie’s empowerment at the expense of the novel’s male characters comes at the very moment Jeanie refuses to lie. Jeanie’s declaration in court causes Davie Deans to “[fall] forward senseless on the floor of the Court-house.” In itself, this circumstance is telling. While Jeanie, even in this new crisis, does not “lose that superiority, which a deep and firm mind assures to its possessor,” her father is now completely incapable of doing anything to help Effie. Further,
Davie Deans’s fainting fit in court, although not overtly gendered, is a feminizing act. In the nineteenth century, hysterical behaviors such as “faint[ing], los[ing] their senses, [and] burst[ing] into tears” were seen as the product of diseased female sexuality.83 Later, when Jeanie and her father seek shelter in her house, Jeanie’s cousin, Mrs. Saddletree, reinforces this interpretation of Davie Deans’s behavior. She takes his hand and exhorts him to “sit up, and bear his sorrow like a good man.”84 But when she lets go, his hand falls “powerless by his side.”85

When Jeanie visits Reuben Butler, her fiancé, she encounters yet another male victim of some form of hysteria. Apparently, Butler has worried himself into “a succession of slow and lingering feverish attacks, which greatly impaired his health.”86 Although he questions Jeanie’s resolution to go to London “without a man to protect [her],” Butler is forced to acknowledge his own inadequacy as protector. Jeanie accurately assesses the situation: “Dear Reuben, ye speak of protecting me on my journey—Alas! who will protect and take care of you?—your very limbs tremble with standing for ten minutes on the floor; how could you undertake a journey as far as Lunnon?”87 Here, as others have noted, “Scott seems determined to insist that it is Butler, not Jeanie, who is weaker.”88 The narrator tells us that “to emulate [Jeanie’s] devout firmness and confidence seemed now the pitch of [Reuben’s] ambition.”89 By being truthful in court, Jeanie has shaken the usual order of things, creating a crisis that only she, as an outsider and as a woman with extreme moral clarity, can resolve.

Later in her journey, Jeanie encounters the final male figure who might have been the one to carry the burden of saving Effie. When Jeanie finds herself under the same roof as George Staunton, she once again assumes her role as the active, courageous, and competent heroine in the face of male incapacity. Like his counterparts, Reuben Butler and Davie Deans, Staunton is physically infirm, injured after falling from his horse while rushing to offer his life to save Effie.90 Staunton’s physical inability to ride to Effie’s rescue is a product of his moral bankruptcy. While pleading his cause to his father, Staunton tells him, “you do me an injustice. By my honour you do!” To which his father replies, “Your honor!” and “turn[s] from him, with a look of the most upbraiding contempt, to Jeanie.”91 Like the other men Jeanie encounters, Staunton is disabled, lacking both the corporeal and the moral power to free Effie and leaving Jeanie, the repository of intact honor and health, as the novel’s redemptive figure.

Though she finds no active support from her father, her betrothed, and her sister’s lover, Jeanie gains assistance from other men who admire her for her courage and strength. When Jeanie goes to visit Effie after the trial to tell her that she has found a way to save her, the jailer, Ratcliffe, offers her advice on how to gain access to the Queen. He tells her, “D—n me, I respect you, and I can’t help it. You have so much spunk that d—n me, but I think there’s some chance of your carrying the day.”92
Jeanie also receives crucial financial support from her longtime admirer, Lord Dumbiedikes. Here, again, Jeanie confronts a man with a flawed character who will learn to be guided by her. When Jeanie goes to Dumbiedikes’s mansion to borrow money for her journey to London, he responds, predictably, by offering her all the silver in his safe if she will marry him. But Jeanie refuses to exchange with the Laird on sexual terms. In Scott’s words, she “[holds] fast her integrity, though beset with temptations.” Once again, Jeanie’s integrity is paramount and she refuses an expedient, though morally flawed, method of saving her sister. She does not encourage Dumbiedikes and leaves the mansion without the money she needs. When he then follows to lend her the money without conditions, he initiates this exchange:

“Jeanie, they say ane shouldna aye take a woman at her first word?”

“Ay, but ye maun take me at mine, Laird,” said Jeanie, looking on the ground, and walking on without a pause.—“I hae but ae word to bestow on ony body, and that’s aye a true ane.”

“Then,” said Dumbiedikes, “at least ye suldna aye take a man at his first word. Ye maunna gang this wilfu’ gate sillerless, come o’t what like.”—He put a purse into her hand. 

Jeanie and Dumbiedikes exchange silver here, but they also exchange conventional character traits. According to popular moral philosophy, truthfulness, untainted by concern for reputation, was an element of male honor. Jeanie declares herself true to her first word, but it is the Laird who initially lacks the instinct for truth. Only after Jeanie shows her own resolve does his own good character emerge. In this way, Jeanie works her way to London, rejecting male threats to her integrity and eventually convincing the male world to respect and seek to emulate her.

B. The Moral Agency of the Truth-Telling Woman

Jeanie’s character will seem strange to anyone familiar with the history of British fiction. As Ian Watt writes in The Rise of the Novel, Jane Austen’s novels refined and integrated the characteristics of the eighteenth-century novel that emphasized economic stability, social mobility, and marriage. By the late eighteenth century, British novels almost invariably portrayed women in the home angling toward a husband rather than on the high road to London, trying to save a life. Domestic sexual virtue, not public honesty and action, was the currency of the nineteenth-century heroine.

Furthermore, as I have described elsewhere, truth was itself a complicated proposition for women in a social world that required them to preserve appearances at all
Nicola Lacey refers to this phenomenon in *Women, Crime, and Character* when she describes the social pressure on women to inhibit self-expression and the extent to which that pressure curtailed female agency. Lacey attributes this pressure to an increasing "preoccupation with codes of norms" as the culture itself was destabilized by industrialization and urbanization. But, as she also notes, the seeds were sown much earlier. Rousseau, for example, argued that the key to female virtue lies equally in the thing itself and in its appearance. Thus, it is not surprising that public truth telling, or even truthfulness divorced from the context of relations with men, although it formed part of earlier literary canons (with Antigone forming perhaps the most famous example), was almost entirely absent from novelistic depictions of women. This was so to such an extent that Anthony Trollope, at the height of his popularity, wrote, in describing one of his heroines, "[i]t is, I think, certainly the fact that women are less pervious to ideas of honesty than men are. They are less shocked by dishonesty when they find it, and are less clear in their intellect as to that which constitutes honesty."

Yet, precisely because she is a woman and unique as a truth-telling heroine, Jeanie is the ideal protagonist for a critique of expedient lies that perpetuate unjust laws. Parallel to the expectation that women be the moral exemplars of the home, there is no stronger figure of unbending moral determination in the early nineteenth century than the female heroine. Indeed, in the novels of Scott’s day, women’s integrity is a more powerful and a more interesting weapon than the violence characteristic of male honor. Nancy Armstrong argues "the belief that domestic life and moral sensibility constituted a female domain was much more than a sop to the woman. Although it did not seem to be political or economic on the surface, female authority was nevertheless real." For example, in Richardson’s *Pamela*, published in 1740, Pamela’s morality is the only weapon that her antagonist, Mr. B., cannot defeat with brute force. In his repeated attempts to rape her, Mr. B. argues that Pamela will not technically be forfeiting her innocence if she is “obliged to yield to a force she cannot withstand.” Ironically, however, it is Mr. B. who will ultimately submit to the superior force of Pamela’s virtue. By the middle of a plot in which he eventually marries her, he tells Pamela, “the regard I had then newly professed for your virtue made me resolve not to violate it.” Jeanie’s decision not to lie in court becomes just as powerful a moral decision as Pamela’s refusal to sleep with Mr. B., or Jane Eyre’s refusal to stay with Rochester.

Like her contemporary female protagonists, Scott portrays Jeanie as a domestic heroine who must guide the male world around her to escape its own immorality. Placed in the context of the history of the novel, Jeanie is part of a new paradigm of female desirability linked to "the rise of the domestic woman," a cultural phenomenon that emphasized women's ability to run an economical and orderly household.
The emphasis on internal characteristics of women replaced, first in literature and then in society, a reverence for external qualities such as beauty, wealth, or social position. “Modesty, humility, and honesty” usurped “the ornamental body of the aristocrat” as desirable female attributes. Scott very clearly inserts Jeanie into this paradigm by introducing her with a description of her home life and upbringing, emphasizing her homely competence and contrasting it with Effie’s willful beauty.

This rejection of external flair in favor of internal qualities of honesty and modesty also reverberates in the nineteenth century’s struggle for a legal code that would provide consistent outcomes based on actual blameworthiness. It is that struggle that spawned pious perjury as a way to mitigate the ubiquity of capital punishment. Yet even as pious perjury promoted justice, it denoted truth, creating problems for the integrity of the system, as the arguments of the law reformers make clear. When Jeanie Deans brings her internal self-regulation and integrity into the male world of the law, she not only signals that the world is disordered for its reliance on lies but shows that its focus on character rather than actual guilt or innocence is misplaced. The strange deficit of male action in the face of Effie’s death sentence indicts a male world that does not understand this ultimate form of truth seeking, the goal of convicting only the culpable.

IV. PIOUS PERJURY GLIMPSED TODAY

“The criminal laws of a rude people are generally framed rather from the impulses of passion than the dictates of understanding”

_The Heart of Midlothian_ is now a little-read work, but the law reform issues it addresses are not historical curiosities. In Scott’s day, before reformers had succeeded in limiting the reach of the death penalty, the pardon power was an integral safety valve even though it may often have worked unevenly to favor the privileged classes. Indeed, Jeanie’s moral certainty surely reflected her faith that her plea would be heard and that justice would be done by a sovereign she viewed as operating under the guidance of a merciful god. The choice between truth telling and a life-saving lie looks quite different when the sovereign is malevolent, as under a totalitarian regime, or when mercy itself has become hostage to the politics of retribution.

In the United States, capital crimes have been sharply narrowed, but flawed criminal laws and disproportionate punishments have not gone away. The war on drugs and the ascendency of a “tough on crime” ideology over the past decades have
led to the highest incarceration rate in the world and to sentencing practices that are widely recognized as draconian.\textsuperscript{112} Yet, in our highly rationalized system, the pardon and clemency powers are now rarely exercised,\textsuperscript{113} and juries have a sharply curtailed role in mitigating punishments. Indeed, Scott’s own comment on the English law’s overdependence on capital sentencing, written four years before the publication of The Heart of Midlothian, seems an apt description of today’s profligate use of long sentences to punish petty crimes and status offenders:

The criminal laws of a rude people are generally framed rather from the impulses of passion than the dictates of understanding, and have reference not so much to the promotion of public welfare as the gratification of revenge. . . . The obstinate and in some respects undiscriminating attachment of the [people] has left ample room for the judicious interference of the hand of reform.\textsuperscript{114}

Not surprisingly, as reformers struggle with limited success to devise effective responses to our own incarceration crisis, some have begun to look to the same types of ameliorating mechanisms at play in The Heart of Midlothian. A few courts and commentators have begun to call for a revitalized pardon and clemency process, among them Associate Supreme Court Justice Anthony Kennedy.\textsuperscript{115} Others have begun to rethink the role of the jury in criminal sentencing, calling for changes that in varying ways seek to empower the jury to exercise the type of mitigating role that Blackstone catalogued as pious perjury and that others classify as jury nullification.\textsuperscript{116} Most recently, Judge Nancy Gertner, expanding on the implications of recent Supreme Court originalist understandings of the Sixth Amendment, has argued that juries cannot intelligibly exercise their historic function unless they understand the sentencing consequences that attach to their findings, just as did colonial juries in an era in which a wide range of crimes were punishable by death.\textsuperscript{117} These arguments are, of course, controversial, as the recent federal indictment of a man for handing out flyers outside a New York courthouse advocating jury nullification attests.\textsuperscript{118}

Ironically, as reformers seek to revive mechanisms used in an earlier day to soften harsh criminal codes, a species of “pious perjury” is reported to be commonly practiced in the law enforcement community as a means of avoiding the strictures of the exclusionary rule or, worse, to shore up a weak substantive case.\textsuperscript{119} According to a study of police misconduct in New York, police lies are so routine on facts related to Fourth and Fifth Amendment issues that the word “testifying” has been coined to name the practice.\textsuperscript{120} Another study in Chicago reported that all but one of the judges, public defenders, and prosecutors who were interviewed “believed that police lie in court to evade the exclusionary rule.”\textsuperscript{121} Some survey respondents in the Chicago study stated that they did not view these lies under oath as perjury so long as they were “told during
a suppression hearing.” Noting a similar phenomenon, a Florida appellate court recently upheld a trial court’s factual findings that a search was consensual, even while expressing skepticism that the police officers who claimed the search was consensual had been telling the truth. The court wrote that, “the finding of ‘consent’ in so many curious circumstances is a cause for concern.” It also warned that “without an unbiased and objective evaluation of testimony, judges devolve into rubber stamps for law enforcement.” Rather than a collaboration between judge and jury to mitigate overly harsh punishment through false fact finding, the Florida opinion suggests that we may now be in a world in which judges and police officers are to a degree complicit in altering facts to ensure that the accused will face punishment.

In 1818, Romilly argued for reform of a system in which the problem was that “the humanity of prosecutors and witnesses equally revolts at [the law’s] indiscriminate rigour.” Now that capital punishment is no longer used indiscriminately, the picture is very different. In our highly rationalized justice system, the humanity of prosecutors and police witnesses does not appear to be in revolt against punishments that to many seem excessive and inhumane. To the contrary, when we look for modern examples of pious perjury, police lies to facilitate convictions are the ones that stand out even as jury nullification to secure leniency is resoundingly criticized. In this setting, the story of Jeanie Deans serves to remind us that if truth and truthfulness are essential to the integrity of the justice system, fidelity to the oath cannot be made to depend on the outcome.

NOTES

I am grateful to Martha Nussbaum, Alison LaCroix and Virginia Kerr for discussion of the argument of this chapter and for many helpful comments and suggestions.


4. Id.

5. Hay, “Property, Authority and the Criminal Law.”


16. See, e.g., Benjamin Constant’s pamphlet “On Political Reactions” (1797).


18. The Scottish infanticide statute under which Effie Deans was convicted was modified in 1803 and replaced in 1809 with a new statute lessening the crime to ‘Concealment of Pregnancy,’ which carried a sentence of two years’ imprisonment.” See Lenora Ledwon, “Maternity as a Legal Fiction: Infanticide and Sir Walter Scott’s The Heart of Midlothian,” Women’s Rights L. Rept. 18 (1996), 1, 8.


19. This was also true in colonial America. If a jury there concluded that death was inappropriate, it would decline to find guilt or find the person guilty of a lesser crime. See Nancy Gertner, “Juries and Originalism: Giving ‘Intelligible Content’ to the Right to a Jury Trial,” Ohio State L.J. 71 (2010), 939–940.


21. Falsifying facts was a form of perjury by the jury because jurors were sworn “well and truly to try, and true deliverance make, between our sovereign lord the king, and the prisoner whom they have in charge; and a true verdict to give, according to their evidence.” William Blackstone, Commentaries on the Laws of England, Book IV (1765–1769), 348, ch. 27.

22. Id., 239, ch. 17.

23. Sir J. Newport, reported in 3 Basil Montagu, Esq., The Opinions of Different Authors Upon the Punishment of Death (1813), 125.


25. Id.

26. Id.


32. Bentham, Rationale of Judicial Evidence, 386.

33. See Graham McMaster, Scott and Society (Cambridge University Press, 1981), 81. McMaster notes that Scott approved of Romilly’s proposed reforms “because he consider[ed] that the law ha[d] lagged behind the ‘progress of society’ and need[ed] to be brought into phase with it.” Id. By contrast, Scott’s views on law reform in Scotland appear superficially to be more conservative. Id., 84–85.


35. Id., 42.

36. Lord Holland, “Statement in the House of Lords Friday” (May 24, 1811), in Basil Montagu, Esq., The Opinions of Different Authors Upon the Punishment of Death, Vol. 3 (1813), 125.


39. Id., 60.

40. Id., 62.

41. Id., 63.


43. Id., 147–148.


45. Sir Walter Scott, Note to the 1830 edition of The Heart of Midlothian, “Child Murder.”

46. Id.

47. For a deeper look at society’s attitude toward bastardy, specifically, the perception of male bastards as powerful, sexually deviant figures, see Martha Nussbaum’s paper in this volume.


49. Id.

50. Id., 159.

51. Id.

52. Id., 160.

53. Id.

54. Id.

55. Id (emphasis added).
56. In this context, man-sworn meant “to be guilty of perjury or oath-breaking,” *Oxford English Dictionary*, online edition, “Manswear” (citing this passage from *The Heart of Midlothian*).

57. The Cameronians were a sect of Scottish Covenanters or Reformation Presbyterians who were the dominant party in Scotland between 1638 and 1651. In 1640, Parliament adopted their covenant of faith, which denounced Catholic doctrines and made it binding on all citizens. With the restoration of Charles II, covenanters were renounced, and Covenanters were persecuted and ultimately defeated at the Battle of Bothwell Bridge in 1679. After the defeat, an extreme faction, led by Richard Cameron, renounced allegiance to the king and continued to press for restoration of religious rule in accord with the covenanters. Scott’s *The Tale of Old Mortality*, published in 1816, centers around this complex seventeenth-century history, which is replete with martyrs and extremists on both sides.


60. Id., 203.

61. Id., 205.

62. Id.

63. Id.

64. Id., 215.

65. Id., 216.

66. Id.

67. Id., 239. Scott tells us that the lawyer, “whose practice and intelligence were considerable…suspected that she came to bear false witness in her sister’s cause.” Id.

68. Id., 241.

69. Scott devotes an entire character, Jeanie’s cousin, Mr. Saddletree, to a dramatization of this absurd legal formalism.

70. Scott explains in the novel that in Scotland pretrial statements were commonly taken from the accused and were often later read out at trial. Scott, *Midlothian*, 232–233.


72. Scott, *Midlothian*, 244.

73. Id., 243.

74. Id., 244.

75. Id.

76. Id., 246–247.

77. Id., 247.

78. Id., 246.

79. Id., 256.


82. Id.


85. Id.

86. Id., 274.

87. Id., 281.

89. Scott, *Midlothian*, 282. In a final reversal, Jeanie provides for Reuben financially, leaving gold for the impoverished school teacher in the leaf of his Bible.
90. Id., 346.
91. Id., 348.
92. Id., 256.
93. Id., 268. Jeanie’s interaction with Dumbriedikes also adds faithfulness to her list of moral attributes, allowing her to prove her fidelity to her humble fiancé, Reuben Butler. Like a typical domestic heroine, she will marry for love rather than social advantage.
94. Id., 270.
100. Lacey, *Women, Crime, and Character*, 77, 79.
102. Alexander Welsh has argued that there were two plot lines involving “the heroine of truth” in Victorian fiction, one involving the loyal heroine and the other involving a truth-telling heroine. However, his only example of a heroine whose heroism involves truth-telling rather than loyalty is Jeanie Deans herself. Welsh, *City of Dickens*, 169–170.
104. Armstrong, *Desire and Domestic Fiction*, 42.
105. Of course, as Nicola Lacey’s chapter in this volume describes, by the late nineteenth century women were once again being depicted in fiction as devious, if not actually criminal.
106. Armstrong, *Desire and Domestic Fiction*, 42.
108. Id., 302.
110. Id., 66, 71.


122. Id.


124. Id.