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Anita L. Allen
University of Pennsylvania Carey Law School

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THE JURISPRUDENCE OF JANE EYRE

ANITA L. ALLEN*

I. INTRODUCTION

Charlotte Brontë first published Jane Eyre in 1847 under the androgynous pseudonym Currer Bell. The commercially successful novel made Brontë one of the most famous British writers of the Victorian period. Numerous biographies describe Brontë's curious career and many critical studies interpret her fiction.

* Professor of Law, Georgetown University Law Center; J.D. 1984, Harvard Law School; Ph.D. 1979, University of Michigan. I would like to thank those who participated in faculty workshops at which versions of this Article were presented. Workshops were conducted at Boston University Law School, Dartmouth College, Georgetown University Law Center, Harvard Law School, Northeastern University Law School, University of Michigan Law School, and University of Pennsylvania Law School. For their help in preparing this Article, I would also like to thank James Adams, David Attasani, Michele Beasley, Robert Fullinwider, Kathleen Genova, Linda Hirshman, Lee Llambelis, Frank Michelman, Martha Minow, Maria Morales, Judith Resnik, Louis Michael Seidman, Giradeau Spann, and Kenneth Winston.

1 JANE EYRE: AN AUTOBIOGRAPHY (Currer Bell ed., Smith, Elder & Co. 1847).
4 See, e.g., MAGGIE BERG, JANE EYRE: PORTRAIT OF A LIFE (1987); REBECCA FRASER, CHARLOTTE BRONTE (1988); JEANNETTE KING, JANE EYRE (1986); MARGOT PETERS, CHARLOTTE BRONTE: STYLE IN THE NOVEL (1973); Peter Grudin, Jane and the Other Mrs. Rochester: Excess and Restraint in Jane Eyre, 10 NOVEL 145 (1977).

Scholars often point out that Jane Eyre's intense narrative is structurally straightforward, except for the narrator's occasional direct addresses to her audience and her puzzling description of the story being told as both an "autobiography" and a "novel." See generally, ANNETTE TROMLY, THE COVER OF THE MASK: THE AUTOBIOGRAPHERS IN CHARLOTTE BRONTE'S FICTION 14-19 (1982) (arguing that the novel should be read as self-presentation of motives and principles rather than as narration of past experience). The plot of Jane Eyre is notable for its inclusion of extraordinary supernatural events and unlikely coincidences. These contribute to the novel's seeming, at times, more
The present study of *Jane Eyre* highlights previously neglected legal dimensions of the novel. *Jane Eyre* depicts a passionate but prudent young woman's encounter with literal and metaphorical law. Happiness comes to Jane only after she overcomes the hegemony of passion through knowing conformity to her own understanding of the authoritative rules and principles promulgated as the "laws" of God, government, community, and nature.  

*Jane Eyre* has played a special role in the lives of many of its female readers. The novelist Jamaica Kincaid reports that she "loved *Jane Eyre*" and read it "over and over" again as a child growing up in the West Indies. As a child growing up in the United States, I, too, read *Jane Eyre* repeatedly. I am not certain why I cherished Brontë's novel. Perhaps I thought its description of Jane could also have been a sketch of me: small, plain, precocious, passionate, and often sad. Jane presents her life as a triumph over a society that values submissiveness and physical beauty in women. Perhaps, therefore, Jane's history offered hope that intellect and industry can prevail over misery and injustice. Finally, Brontë's pervasive slavery metaphors may have struck a responsive chord in me, an African-American coping with the legacy of social inequality in the former slave state of Georgia.


8 Roland Barthes, *The Pleasure of the Text* 62–63 (Richard Miller trans., 1975). See also Buoy H. Boruah, *Fiction and Emotion: A Study in Aesthetics and the Philosophy of Mind* 126 (1988) ("Our ability to appreciate fictional characters is of a piece with our capacity to appreciate people who are caught up in circumstances of which we are also possible victims.").
Before conceiving the idea for the present Article, I was planning to write a much different essay about *Jane Eyre*. My original aim was to pay homage to a personally meaningful work of art. Although aware of a flourishing “law and literature movement” in legal academia, I did not set out to write about the legal aspects of *Jane Eyre*. In fact, I did not regard the novel as having any significant legal dimensions. I thought of writing on a topic such as Brontë’s powerful use of avian imagery. Lacking professional credentials in literature did not stop me from aspiring to publish a formal study of some aspect of Brontë’s technical artistry unrelated to law. Extraordinary fondness for *Jane Eyre* gave me courage to believe that in this instance an avocational break from writing about the law would yield a paper fit for submission to scholarly journals of literature.

Preparing for a serious literary study required re-reading *Jane Eyre*. I returned to the novel excitedly, expecting the same pleasure experienced in childhood. I was not disappointed when it came to the lush, poetic language of the novel. However, I was very disappointed when it came to the story Brontë’s language related. For me, the story was no longer an inspirational romance with a happy ending. A lawyer, I was overwhelmed from the start by disturbing reminders of an iniquitous nineteenth-century legal order. A legal philosopher, I was greeted in the very first chapter of the novel by Jane as an Austinian subject “habitually obedient”\(^\text{10}\) to the domestic tyranny of her cousin John Reed.\(^\text{11}\) A black feminist, I re-read *Jane Eyre* attuned to the social implications of race, class, and gender.\(^\text{12}\) Through these lenses, Jane seemed to be a privileged, bourgeois, white Englishwoman with an admittedly miserable childhood who complains about women’s inequality and poverty but does nothing about either, even when the economic means for doing so are placed at her disposal.\(^\text{13}\)

\(^{10}\) *John Austin*, *Lectures on Jurisprudence or The Philosophy of Positive Law* 221 (Robert Campbell ed., 5th ed., 1911) (1873) (hereinafter *Austin*).

\(^{11}\) *Brontë*, *supra* note 4, at 8.


\(^{13}\) It is not wholly mysterious that Jane would be content once she had found wealth and love within a still-unjust world:

> [W]e have a hierarchy in which virtually every individual is in a position of dominance with respect to some, while at once being dominated by others. This
Jane Eyre does not resonate with me in the way that it did when I was young. The solution to Jane’s profound sense of female oppression turns out to be money and a man. She is content with a private solution to a public problem. Today, the Cinderella solution to the problems of personal autonomy skillfully posed by Jane Eyre falls short of my expectations of female character and female art. Alice Walker on Miss Celie is more inspiring than Brontë on Jane; John Updike on Rabbit is more credible than Brontë on Rochester.14

Jane lets me down; she is no longer a heroine meriting emulation. Jane’s lover, Edward Rochester, makes me angry. Rochester locks the Creole wife he describes as “black” in his attic and denies her existence.15 Furthermore, he responds to Jane’s needs with deception and selfishness. One cause of my awkward emotional responses to this outstanding work of art which was, after all, produced in another time and place, may be that “[w]henever I attempt to ‘analyze’ a text which has given me pleasure, I encounter my ‘individuality’ . . . . I write myself as a subject at present out of place, arriving too soon or too late . . . [an] anachronistic subject, adrift.”16 Whatever the cause of my new response to Jane Eyre, I now respect the novel but admire neither Jane, nor Rochester, nor their story.

indicates one important motivation in the acceptance of the crucial ideologies originally proffered in justification of economic hierarchization . . . . [V]irtually everyone has or feels he or she has something to lose in an economic hierarchy such as our own . . . . Thus pretty much everyone will be inclined in some degree to accept the ideology which reinforces [sic] and justifies the hierarchy in which he or she is, while dominated, dominant as well.

Patrick Colm Hogan, The Politics of Interpretation: Ideology, Professionalism, and the Study of Literature 146 (1990). However, “[p]rimary gain does not provide an adequate explanation of the acceptance of ideology by those who are drastically and unjustly economically limited. These reflections indicate at least some of the reasons why there is a women’s liberation movement . . . but no significant, broad-based socialist movement . . . .” Id. at 147.


15 Bertha Mason was not racially black, but a (white) West Indian creole. Jean Rhys wrote Wide Sargasso Sea from Bertha’s perspective. She painted Bertha initially as a poor, “white nigger” living in Jamaica where “black nigger better than white nigger.” Jean Rhys, Wide Sargasso Sea 24 (W.W. Norton & Co. 1982) (1966). In Rhys’ story Bertha inherits wealth as a consequence of her beautiful mother’s re-marriage, wealth Edward Rochester eventually controls.

16 Barthes, supra note 9, at 62-63.
The Article that follows bears no resemblance to the essay that I had originally planned to write. This Article develops my new perspectives on *Jane Eyre*, the perspectives of an African-American reader who is also a lawyer, a legal philosopher, and a feminist. Accordingly, the Article is a close examination of the law, the legal philosophy, and the feminism of *Jane Eyre*.

First, using *Jane Eyre* as an illustration, this Article endorses the contention defended by others that perspectives taken from law can illuminate literary texts. Second, the Article offers a detailed interpretation of *Jane Eyre* that suggests answers to some of the questions about the text raised by generations of scholarship and criticism. In particular, it suggests a way of responding to the debates over whether *Jane Eyre* is a novel of female liberation or a novel of female restraint. My interpretation draws on nineteenth-century philosophical conceptions of law, as elaborated chiefly in the writings of Brontë’s contemporary, John Austin, to elucidate the novel’s understanding of the normative forces of divine, civil, customary, and natural law.

Finally, this Article raises concerns about the contemporary scholarship that treats *Jane Eyre* as a virtual feminist manifesto. A deep-running traditional liberal positivism is a hallmark of Brontë’s novel. Viewed in one salient aspect, *Jane Eyre* suggests no means of escaping the limitations of gender and poverty to women who cannot hope to inherit a fortune or to marry a rich man. It presents no alternative to the positive law or legal theory that was historically associated with female inequality in England. Some account is needed of how women, especially feminists, can find much of value in a story whose ending offers no resounding, that is, no unambiguous and uncontroversial, call for feminist reforms.

I suspect that *Jane Eyre* is a popular work among women readers because it is one of the few “classics” in the English language that acknowledges typical female concerns from a woman’s own perspective. Moreover, while the novel depicts women’s social inequality, Brontë and her heroine both demonstrate women’s moral, intellectual, and artistic equality. In these ways, the novel communicates messages of hope to many women who feel misvalued by society. However, issues for feminist interpretations of the novel remain. The popularity of *Jane Eyre* among women seemingly stems from its ability to console. But, as I
retell her story, readers ought not to be as happy for Jane as she is ultimately for herself. A consoling novel is not necessarily an effective antidote to liberal patriarchy.

II. LAW AND LITERATURE

A. Law In, As, and Through Literature

Legal academia has recently rediscovered literature. One important aspect of the rediscovery is a renewed interest in literary depictions of law. When law-in-literature exponents make drama, short stories, poetry, and novels the focus of their law teaching and scholarship, they commonly select Anglo-American, European, or Russian classics that feature legal characters, events, institutions, metaphors, and themes.

In a second key aspect, legal academics’ rediscovery of literature is a return to fiction for compelling ideals of morality and social justice. Law-through-literature mavens have advised courts and the bar to seek in literature the normative diversity and inspiration absent in the routine faces of legal practice. For

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The present law and literature movement is indeed a re-discovery. Jurists and scholars of previous generations, including John H. Wigmore, Roscoe Pound, and Benjamin Cardozo, explored connections between law and literature. See also John M. Gest, The Lawyer in Literature (1913).

18 See, e.g., Posner, supra note 17 (including discussion of Albert Camus’ The Stranger, James Gould Cozzens’ The Just and the Unjust, Franz Kafka’s In the Penal Colony, William Shakespeare’s Merchant of Venice, and Mark Twain’s Pudd’nhead Wilson).

more than a decade, lawyers, judges, and magistrates have followed the advice of the legal humanists, combatting “burn-out” through participation in publicly and privately funded seminars devoted to discussion of literary texts.20

A third aspect of the rediscovery of literature is the perspective that legal materials, including appellate opinions and scholarship, are a form of creative literature. The law-as-literature movement has spawned the closest inquiries into the similarities and differences among nominally legal and literary uses of language.21 While controversies remain about the ultimate value of turning to theories of literary studies to explain the nature of legal discourse and interpretation,22 literary styles and genres have become increasingly familiar in the law journals.23

Whether the lessons of interdisciplinary confrontation are many or few is a topic of on-going exchanges. However, the rapprochement of law and literature24 amply demonstrates that the field of law can learn from the field of literature.25 More fully, it demonstrates that legal educators, theorists, and practitioners can learn from creative writers, works of literature, and literary theorists.


24 Particular studies of law and literature may incorporate perspectives on law-in-literature, law-through-literature, and law-as-literature. See, e.g., POSNER, supra note 17. As Posner notes, there is also a law of literature that includes the law of copyright. Id. at 319–52.

25 See, e.g., John H. Wigmore, Introduction to Gest, supra note 17, at viii–ix (suggesting that every lawyer must be familiar with novels and other fine literature as “one bound to know what features of his professional life have been taken up into general thought”; literature reflects “the history of law” and the “operation of the old rules now gone”; the “living side of the rules of law is often to be found in fiction alone”; and, finally, lawyers must know human nature and “literature . . . is a catalogue of life’s characters.”).
B. Jurisprudence in the Novel

Assuming that law can learn from literature, is the reverse also true? Can literature learn from law? I believe it can. The general assertion that literature can learn from law is neither original nor controversial.\textsuperscript{26} It has long been recognized, for example, that literary fiction can take its subject matter from the life of the law by building stories out of actual legal events and personalities. The law reports are filled with human drama. The facts of actual cases are potential sources of gripping fiction.

The field of literature can learn from the field of law in another respect. Legal experts can illuminate the legal assumptions and depictions of legal doctrine found in works of literary fiction. Since legal accuracy \textit{per se} is seldom critical to the aesthetic success of a work of art, scholars who illuminate the legal context in which a work is produced may make more significant contributions than those who take technical issue with the truth value of legal propositions a work asserts or implies. Yet, some fiction has realist pretensions and is valued for its realism. Astute lawyers with relevant experience are particularly well-suited to assess the realism of depictions of legal practice.

Lawyers can go beyond describing the positive legal order of an author’s era or gauging the verisimilitude of legal representations.\textsuperscript{27} Lawyers can contribute to the study of literature by illuminating the legal philosophy, that is, the jurisprudence, in works of literary fiction.\textsuperscript{28} The jurisprudential theory contained in literature has not received the attention it deserves. Accordingly, the central purpose of this Article is to demonstrate that studies of jurisprudence (an aspect of “law”) have something of value to offer studies of the novel (an aspect of “literature”). My example is Charlotte Brontë’s \textit{Jane Eyre}. Establishing that jur-

\textsuperscript{26} See generally infra notes 59–62 and accompanying text.
\textsuperscript{27} Richard Posner has assessed a number of such contributions at length. \textit{Posner, supra} note 17, at 71–131.
\textsuperscript{28} I use “jurisprudence” here, along with “legal philosophy,” to denote perspectives on, or analysis of, the conceptual and normative foundations of the law. Lawyers and legal academics currently use “jurisprudence” in at least three other senses. The term denotes substantive fields of law viewed as a whole, as in “constitutional jurisprudence” or “criminal jurisprudence.” The term also denotes the process of judicial adjudication. “Jurisprudence” denotes, finally, disparate interdisciplinary subjects relating to the foundations of law such as legal history, legal anthropology, legal sociology, and legal rhetoric.
isprudential insights are of value to the study or appreciation of novels will require more than one good illustration.\textsuperscript{29} I am nevertheless optimistic that future jurisprudential studies of other novels will corroborate my claim. At a minimum, the present effort will augment the discussion of interdisciplinary teaching and learning by providing evidence of the manner in which lawyers and judges who read jurisprudence may come to read novels.

A rough conception of the law in literary fiction will help clarify what I mean by the jurisprudence in literary fiction. The formalist’s rules and the Holmesian “bad man’s” sanctions are the most apparent law appearing in literature.\textsuperscript{30} But the law in literature encompasses all of a work’s literal and metaphorical representations of encounters with: norms, in the form of rules, commands, principles, maxims, and rational precepts imposed by reason, power, and authority; sanctions, both positive (e.g., rewards) and negative (e.g., punishments); and actors, authorities, officials, and professionals who legislate, expound, prosecute, defend, judge, and sanction under the banner of a community’s governing norms. Against this tripartite understanding of the law in literary fiction, the jurisprudence in literature can be explained as a work’s most general descriptive, prescriptive, and analytic theories about legal norms, sanctions, and actors. The jurisprudence of a work of fiction importantly includes its answers to perennial questions about the nature of law, legal obligation, legal reasoning, legal judgment, legal order, and, in its broadest senses, justice.

What many academic lawyers teach under the rubric of jurisprudence is therefore a part of what literary studies can learn from legal studies. Jurisprudence can have a powerful role in a work of literary fiction which contains little explicit legal drama. Scholars who extract and elaborate the jurisprudential dimen-

\textsuperscript{29} \textit{Jane Eyre} is a superb illustration of the broad points I wish to make about law and literature. However, I did not canvass world literature and select it as the focus of this Article solely for that reason. I do not even claim that \textit{Jane Eyre} is, in every significant respect, a typical or “standard” novel. \textit{Cf.} Kendall Walton, \textit{Categories of Art}, 78 Phil. Rev. 334, 337–42 (1970) (describing works of art as having “standard, variable and contra-standard properties”). I have selected \textit{Jane Eyre} because of its special appeal to female readers and for its pedagogical potential.

\textsuperscript{30} Oliver W. Holmes, \textit{The Path of the Law}, 10 Harv. L. Rev. 457, 457–62 (1897) (arguing that the “bad man” cares only about legal prophecies, not about ethical axioms or deductions).
sions of literature have something important to add to scholarly efforts to understand works of fiction, their authors, and their authors’ intellectual milieus. Lawyers are by no means uniquely qualified to elaborate the jurisprudence in literature; however, interested interdisciplinary lawyers may have a heightened sense of the importance of doing so.

C. Reading for the Jurisprudence

Literary analysis and interpretation\(^{31}\) of the novel profitably can include “reading for the jurisprudence.”\(^{32}\) *Jane Eyre* is an excellent vehicle for the argument that bringing legal philosophy to bear on literature has a pay-off for literary analysis and interpretation. A jurisprudential reading of *Jane Eyre* can enhance aesthetic appreciation of the novel as a work of art. A jurisprudential reading can also enrich appreciation of the novel as an artifact reflecting the philosophical predilections of its age.

Barred by her gender from the legal and scholarly professions, Brontë nonetheless expressed a subtle understanding of law in her fiction. I draw on the analytical jurisprudence of John Aus-
tin, Brontë’s countryman and contemporary, to frame her fecund tale as an instantiation of nineteenth-century legal thought. *Jane Eyre* is, I suggest, the story of Jane’s eyre. My comparison of the work of the reclusive novelist with the work of a reclusive lawyer reveals initially surprising congruence that is ultimately not very surprising at all.

A jurisprudential reading of *Jane Eyre* does more than identify and explain the legal elements of the novel. My jurisprudential reading helps to locate the unity in the novel’s plot and to explain why *Jane Eyre* is a masterpiece of fiction. It helps to explain why, as Margot Peters argued on related grounds, *Jane Eyre* is not interpreted plausibly as simply a wild, unrealistic Gothic romance. The jurisprudential reading of *Jane Eyre* also gives coherence to the character of its heroine. For example, it helps

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33 John Austin (1790–1859) first published his legal philosophy as *The Province of Jurisprudence Determined* in England in 1832. Austin’s work is now collected in 1 AUSTIN, supra note 10, and in JOHN AUSTIN, 2 LECTURES ON JURISPRUDENCE OR THE PHILOSOPHY OF POSITIVE LAW (Robert Campbell ed., 5th ed., 1911) (1873) (hereinafter 2 AUSTIN).

34 Jane Eyre, who travelled from one domestic venue to another passing judgment on herself and others, was a kind of "justice in eyre." Beginning in the Middle Ages and continuing through about 1340, English kings commissioned "the general eyre" consisting of itinerant justices in eyre, circuit judges who travelled about from district to district hearing cases. R.J. WALKER, THE ENGLISH LEGAL SYSTEM 12–13 (5th ed. 1980). The much feared and unpopular justices in eyre possessed extensive royal powers; and, according to some authorities, their duties included both "the administration of justice . . . [and the] getting of money into the king’s exchequer through the infliction of fines and amercements." Harold D. Hazeltine, *Introduction to William C. Bolland, The General Eyre* xi (1922). While the justices in eyre "meted the exchequer a handsome return . . . [when we turn . . . to the equitable procedure by bill in eyre, royal justice displayed a milder temper: here at least, so it would seem, justice predominated, over-riding the claims of revenue." *Id.* at xii.

Bronte may not have known of the general eyre. It is likely that a visit with her friend Ellen Nussey to the village of Hathersage led Bronte to select "Eyre" as her heroine’s surname. Rebecca Fraser reports that Bronte visited the church and church yard at Hathersage, which are filled with monuments to a real-life Eyre family, and that she “certainly visited members of this ancient squirearchical family still living near Hathersage.” FRASER, supra note 3, at 229. North Lees, the manor house and seat of the Eyre family, is a great house Bronte visited which fits her description of Thornfield. *Id.*

35 See Peters, supra note 4, at 131, 146–48.

36 Cf. SANDRA M. GILBERT & SUSAN GUBAR, THE MADWOMAN IN THE ATTIC: THE WOMAN WRITER AND THE NINETEENTH-CENTURY LITERARY IMAGINATION (1979) (presenting one of the most influential interpretations of *Jane Eyre*). My reading is not intended to supplant Gilbert’s and Gubar’s. Their contention. *Id.* at 317, that *Jane Eyre* masks the author’s despair about confinement in female roles, is very plausible, given the tenor of the letters Bronte wrote to friends prior to her marriage. But I do not fully embrace their interpretation of Bertha Mason as Jane’s double and *Jane Eyre* as a parody of the "nightmare confessional mode of the gothic genre and the moral didacticism of Bunyan’s Pilgrim’s Progress." *Id.* at 314.
to make sense of why Jane, a lonely, prudent, realistic woman, would at first refuse to live with the one man on earth who truly loved her but would later allow herself to be guided by supernatural voices to return to her presumably still-married lover.  

The jurisprudential reading I give helps to shed light on the contradictions in *Jane Eyre* criticism and scholarship. My reading helps to account for why the critics variously have viewed religion, moral convention, and nature each as the dominant theme or normative force in the novel. It illuminates why critics divide over whether *Jane Eyre* is a radical novel of female liberation or a novel of female restraint. My reading also addresses the tension between the feminism in *Jane Eyre* and Jane’s finding complete happiness in a conventional marriage and motherhood, albeit a marriage to a deceitful man with a lewd past. It shows that the feminism in *Jane Eyre* is qualified.

**D. Feminism and Positivism**

The distinctly legal aspects of *Jane Eyre* have largely gone unnoticed by lawyers interested in literature. James Lorimer, a jurist and philosopher who once held the chair of The Law of Nature and Nations at Edinburgh, reviewed *Jane Eyre* in 1849.

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37 But cf. Ruth Bernard Yeazell, *More True Than Real: Jane Eyre’s “Mysterious Summons”*, in *Nineteenth-Century Fiction* 127, 129 (1974). Yeazell’s assertion that Jane’s hearing of Rochester’s cry is an outward sign of an inward readiness to accept love cannot be reconciled with my understanding of the text. Jane never lacked a readiness to accept love, as her relationship with those who were kind to her—Bessie, Helen Burns, Miss Temple, the Rivers sisters—proves. Jane was ready to accept Rochester’s love, too, but she was unwilling to accept the consequences of being his mistress.


39 See, e.g., King, *supra* note 4, at 63 (“most critics would agree that morality is a principle theme in Jane Eyre”).


42 See Grudin, *supra* note 4, at 145 (“Jane Eyre is a didactic novel that subordinates the values of passion to those of restraint”).

for the *North British Review*. Even he brought no special insight to the task. His review defending *Jane Eyre* against charges of vulgarity was memorable not for any attempt to explicate the jurisprudence of the novel, but for its insistence that “Currer Bell,” Charlotte Brontë’s pen name, was a man or, if a woman, “pretty nearly unsexed.”

As previously observed, *Jane Eyre* has played a special role in the lives of many of its female readers. Women educators may have been the first to commend *Jane Eyre* to the law and literature movement. Carolyn Heilbrun and Judith Resnik have identified *Jane Eyre* as a novel worthy of attention. Linda Hirshman has gone so far as to exalt Jane Eyre as “really the mother of us all.” Focussing on works, including *Jane Eyre*, that present dilemmas of female autonomy, Hirshman argues that constitutional interpretation ought to draw on the moral insights of great literature.

I concur that *Jane Eyre* (the book) deserves serious attention from legal educators and scholars. But I hesitate to enshrine Jane Eyre (the character) as a feminist icon. The thrust of my Article is thus quite different from the direction of Hirshman’s earlier article. My concern rests primarily with explicating the jurisprudence in literary fiction, rather than with improving law and legal practice through literature. Moreover, by displaying similarities between the jurisprudence of *Jane Eyre* and the jurisprudence of the classically positivist John Austin, I cast doubt on Hirshman’s prescription of *Jane Eyre* as an antidote to Robert Bork’s constitutional positivism.

As I read the novel, *Jane Eyre* reflects, as much or more than it condemns, key aspects of the tradition of English legal positivism. *Jane Eyre* assumes positivism’s traditional analytical distinction between positive civil law and other normative realms, including positive morality and divine law. The narrative appears

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44 Lorimer’s anonymous review is included in *The Brontës*, *supra* note 2, at 113–16.
47 Hirshman, *supra* note 19, at 209 (citing V. THOMSON, *The Mother of Us All* (1947)).
48 Id.
49 *But cf.* Abramson, *supra* note 17 (arguing that law itself can be a humanity).
to share positivism’s faith that adherence to established rules, principles, and authorities is conducive to happiness.

The novel also adopts a quite significant, though less familiar, feature of English positivism: the virtual unity of actual and ideal law. Positivist legal theories typically maintain that the actual positive law of modern civilizations is highly congruent with ideal law.\(^50\) That is, the conduct that positive law requires is, to a significant extent, the conduct that morality requires as well.\(^51\)

A spirit of protest pointing toward reform is evident in *Jane Eyre*.\(^52\) But that spirit is not easily equated with a platform against legal or constitutional positivism. Hirshman and other contemporary feminists make liberal and progressive uses of *Jane Eyre*, focussing on passages\(^53\) that convey the pain that accompanies legally enforced social inferiority.\(^54\) After reading *Jane Eyre*, one might well understand better why legal policies and theories that impair female equality are inhumane. But any improved ability to understand women’s legal interests after reading *Jane Eyre* must occur despite Jane Eyre. Jane, like Cinderella, finds happiness without upsetting the major institutions and practices that limit women to domestic roles. Jane is completely satisfied with individual, private solutions to what feminism characterizes as

\(^{50}\) See infra notes 95–102 and accompanying text.

\(^{51}\) Thomas Hobbes subscribed to a stronger version of the congruence thesis than John Austin or H.L.A. Hart: Austin and Hart subscribed to an arguably stronger version than reform-minded Jeremy Bentham. See infra notes 95–102 and accompanying text.

\(^{52}\) A spirit of protest flourished in England at the time Brontë wrote *Jane Eyre*. See Fraser, supra note 3, at 147 (amidst much debate in the 1840s, activists demanded political reform in recognition of women’s rational natures and advocated higher education for women). Jane’s determination to be rational and intelligent makes credible the reputation of the book as a “feminist tract.” See Gilbert & Gubar, supra note 36, at 338.

\(^{53}\) See, e.g., Brontë, supra note 4, at 104–05.

\(^{54}\) However, *Jane Eyre* does not dictate specific outcomes in the way Hirshman suggests. Speaking about abortion law, Hirshman writes:

When deciding if society has a right to impose its judgment in a matter so critical to female autonomy as the imposition of an unwanted pregnancy, *Jane Eyre* can tell us, as no political philosophy can, that we are proposing to do an act with great moral consequences to another human being. Of at least equal importance, *Jane Eyre* tells us that the history of our society’s treatment of women is such that the decision to take that autonomy away must be approached with the greatest caution, lest we accept this deprivation simply because it reproduces a familiar status.

Hirshman, supra note 47, at 216. *Jane Eyre* may “tell” some readers some of these things some of the time, but I would dispute that the novel so unambiguously conveys the necessity of a permissive abortion stance.
social, public problems. Readers who identify with Jane or who find her narrative persuasive may also settle for private solutions.

Professor Hirshman’s proposed use of Jane Eyre overlooks a point about the novel that Roland Barthes makes about texts in general: “There are those who want a text . . . without a shadow, without the ‘dominant ideology’; but this is to want a . . . sterile text . . . . The text needs its shadow: this shadow is a bit of ideology, . . . a bit of subject: ghosts, pockets, traces, necessary clouds: subversion must produce its own chiaroscuro [sic].”55 My jurisprudential reading of Jane Eyre illuminates the observation of Brook Thomas that literature is not “an inherently subversive cultural institution” and, in fact, “can serve the dominant ideology as well as challenge it.”56 The “dominant ideology” of Brontë’s time lurks in the shadows of her text. Jane Eyre, like many texts, does not solely or mainly “generate narratives” that deeply contest the legal ideology of its period.57 The novel presents itself as a story of female independence achieved through the acquisition of conventional goods: money and a man. With the jurisprudence of Jane Eyre fully in view, feminists may come to conclude that this brilliant favorite of women is a little dangerous for women and, therefore, for us all.

III. NOVEL LAW: THE LEGAL ELEMENTS OF JANE EYRE

A. Traditional Legal Elements: Action, Language, and Characters

A fictional autobiography, Jane Eyre concentrates on the middle decades in the life of an intense, passionate young governess. The bare storyline of Jane Eyre conceals its jurisprudential riches. Jane Eyre can be read as a simple romantic tale, a kind of adult Cinderella story,58 narrated chronologically in the first

55 BARTHES, supra note 9, at 32.
57 See generally id. at 6.
58 See GILBERT & GUBAR, supra note 36, at 351, 363.
person singular by its heroine. *Jane Eyre* takes the reader on a journey through a sequence of events situated in six residential venues indicative of the cloistered female experience about which Jane complains: Gateshead Hall, the home of orphan Jane’s heartless rich aunt and cousins; Lowood Institution, the charitable boarding school at which Jane is first a pupil and then a teacher; Thornfield Hall, Rochester’s house, where Jane goes to work as governess; the Rivers’ Moor House, Jane’s sanctuary after her flight from adultery at Thornfield; Morton Cottage, Jane’s private quarters adjoining her rude village schoolhouse; and, finally, the manor house at Ferndean, where Jane and Rochester reunite. The narrative takes Jane from house to house, none fully home until the last.

*Jane Eyre* is not essentially a story of legal process or institutions. For example, it is not mainly about a trial in a courtroom or prison life. *Jane Eyre* is no *Bleak House*. Brontë’s novel does not exude the worldly grasp of legal institutions evident in the novels of Anthony Trollope and Sir Walter Scott.

Nevertheless, some of the crucial plot elements in *Jane Eyre* involve major legal events, namely, marriage and inheritance. Both the discovery of a legal impediment to Jane and Rochester’s union and Jane’s discovery that she is a missing heiress are pivotal plot developments. These are key to Jane’s achieving personal and material autonomy. Bertha’s attempts on the lives of Rochester and her brother, Mr. Mason, are *prima facie* torts and crimes, legal events of another dimension. Once the narrator reveals the identity of the perpetrator, a woman blameless by reason of insanity, what appear to be heinous personal crimes

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61 See generally Williams S. Holdsworth, *Charles Dickens as a Legal Historian* (1928) (exploring legal dimensions of *Bleak House* and other novels by Dickens).
62 See generally R.D. McMaster, *Trollope and the Law* 1 (1986) (‘plots of [Trollope’s (1815–1882)] novels repeatedly turn on points of law’ and include approximately 100 lawyers, solicitors, judges, etc., as characters).
63 Sir Walter Scott (1717–1832) was a lawyer and judge. See Gest, *supra* note 17, at 102.
take on the aspect of, at worst, tortious lapses of reasonable care by her guardians.\textsuperscript{64}

One character in the novel, Mr. Briggs, is a legal actor, a lawyer. Briggs appears in the novel essentially as a messenger. He bears the news, good and bad. It is he who reveals Rochester's prior marriage to Bertha Mason just as Jane and Rochester stand at the altar to be wed. Later, it is he who gives notice through St. John of Jane's entitlement to her uncle's estate.

Legal events and characters are not the novel's only legal elements. Literal and figurative uses of the term "law" and its cognates (lawful, lawfully, lawgiver, lawgivers, lawless, laws, and lawyer) appear some twenty-two times.\textsuperscript{65} Courtroom terminology, for example, "judge," "witness," "evidence," "plea," "summon," is also pervasive.\textsuperscript{66}

Accounting for the novel's law-related elements suggests both a general inquiry and a more specific one. The general inquiry is why legal terms, concepts, characters, and events would play a conspicuous role in any novel or work of fiction;\textsuperscript{67} the specific is why they play a conspicuous role in \textit{Jane Eyre}. Roscoe Pound wrote that fiction writers constantly turn to law because "[t]he administration of justice and the law in action touch human life at so many vital points and offer so many dramatic situations . . . ."\textsuperscript{68} Richard Posner more recently made the similar observation that law is a frequent subject of literature because it is a dramatic, permanent, universal feature of human experience.\textsuperscript{69} Posner emphasized that the discontinuity between the spirit and letter of the law makes law a superb metaphor for the arbitrary, coercive, and unjust way in which life and the human condition

\begin{itemize}
\item \textsuperscript{64} The morally blameless character of Bertha's insane acts complicates the theory that Bertha Mason Rochester is a "criminal" version of Jane—her double. Cf. Gilbert & Gubar, \textit{supra} note 36, at 360.
\item \textsuperscript{65} See C. Ruth Sabol & Todd K. Bender, \textit{A Concordance to Bronte's Jane Eyre} 305-35 (1981) (word frequency table for words appearing in \textit{Jane Eyre}).
\item \textsuperscript{66} \textit{Id.} at 314-35 ("judge" and its cognates appear 45 times; the other terms appear a total of 15 times).
\item \textsuperscript{67} Cf. Bender, \textit{supra} note 60, at 11 (noting that the noun \textit{novella} yielded our term novel and meant an "addition to a legal code" in late Latin; criminal law categories have had an enormous organizational significance in the history of the novel).
\item \textsuperscript{68} Roscoe Pound, \textit{Introduction to Law in Action: An Anthology of the Law in Literature} ix (Amicus Curiae ed. 1947).
\item \textsuperscript{69} Posner, \textit{supra} note 17, at 71, 74, 76, 78. Posner does argue ultimately, however, that the essential spirit of the law is not dramatic. \textit{Id.} at 79.
\end{itemize}
are sometimes experienced. In *Jane Eyre* it is precisely Rochester’s disgust with the gap between the spirit and the letter of English divorce law that leads him to attempt an act of bigamy he believes morally correct and, when that fails, to advocate adulterous cohabitation in another jurisdiction. Given the overall drama, or the melodrama, of Brontë’s story, neither Pound nor Posner would be surprised by the prevalence of legal language, metaphors, and events.

Brontë scholar Margot Peters has done much to account for the legal language in *Jane Eyre*. Peters identified three distinct levels of “courtroom” or “legal” language in the novel:

On the first level it is literal, necessitated by the actual legal events in the novel . . . . The second level of language comprises those terms which, because of the way they cluster and because of the figurative resemblance of the scenes they describe to courtroom procedure, have almost certainly been used deliberately by the author. Sometimes they occur metaphorically . . . . The situations vary, however, in the degree to which they are figurative . . . . Finally, there is the language which occurs simply in the natural course of narration where it has ostensibly nothing to do with either figurative or literal legal process at all.

Peters plausibly argues that the prevalence of the first two levels of legal language is explained by *Jane Eyre’s* design: it is “principally a novel about man’s capacity for judgment.” More specifically, she argues that *Jane Eyre* is an “essentially radical” novel about the female capacity for personal judgment. Peters hints that the third level of Brontë’s usage of legal language may have been more or less unconscious.

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70 Id. at 77.
71 Peters, supra note 4.
72 Id. at 133–34.
73 Id. at 148.
74 Id.
75 Brontë may have been influenced to use legal language by her father’s love of politics and by her fondness for reading newspapers. Brontë was familiar with William Shakespeare’s legalisms and the then popular lawyer-novelist Sir Walter Scott. In fact, her bigamy plot may have been suggested by the plot of Scott’s story *The Betrothal*. Finally, and opaqueley, Peters suggests that Brontë’s legal language may have been a result of her sharing qualities with her character. From Brontë’s passionate character one may infer that she possessed a strong guilt complex as a reclusive Victorian woman who craved physical or erotic love, independence, and adventure. Id. at 151–54.
The Jurisprudence of Jane Eyre

B. Jurisprudence

Documenting and accounting for the use of legal terms, metaphors, characters, and events in *Jane Eyre* is a worthwhile task admirably pursued by others. I undertake a related but distinguishable task. I connect *Jane Eyre*’s recognized legal elements to its overlooked legal element, namely its jurisprudence. I elaborate the jurisprudence of *Jane Eyre* by examining the concepts and analytical categories the novel shares with English legal philosophy of its historical period.

Normative order in *Jane Eyre* consists of what the novel, through its pervasive legal metaphors, invites us to think of as spheres of law. Normative order in this novel is thoroughly nomic, that is, thoroughly legal (constituted by literal law) and law-like (constituted by metaphorical law). The spheres of law operative in the fictional world of Brontë’s novel are strikingly similar to the normative realms characterized as literal, metaphorical, or figurative spheres of law in the jurisprudence of John Austin and his philosophical predecessors: the spheres of divine law, positive civil law, positive moral law, and the physical law of nature.76

By maintaining that *Jane Eyre* presupposes a conception of law reminiscent of John Austin’s, I do not mean to suggest that Brontë was acquainted with Austin, his utilitarian mentor Jeremy Bentham, or their writings.77 Yet striking congruences manifest a shared Zeitgeist and a common intellectual heritage.78 I believe Brontë was attempting through fiction to work out philosophical problems relating to the reconciliation of passion and reason, on the one hand, and autonomy (self-rule) and hegemony (rule by others), on the other. She appears to have concluded that self-

76 See infra notes 85–102 and accompanying text.
77 See Tom Winnifrith, *The Brontës and Their Background: Romance and Reality* 84 (1988). Chapter Six, “The Brontës and their Books,” carefully surveys the books, periodicals, and libraries available to Charlotte Brontë and her family. According to Winnifrith, Charlotte may have read some of Charles Dickens’ fiction, but “the Brontës were exceptional in that they were remarkably ignorant of contemporary novels.” *Id.* at 95. The obvious influences on Charlotte’s writing are the Bible, Shakespeare, Byron, and Sir Walter Scott. *Id.* at 84.
78 Thomas makes a stronger claim about the connections between certain jurists and novelists, documenting direct cross-fertilization through personal encounters. See, e.g., Thomas, *supra* note 56, at 8–9.
rule consists of conquering one’s own passion sufficiently to appreciate and accept the legitimacy of rule by others.

These same problems were among those addressed by political philosophers of the time. Not everyone has a taste for academic philosophy, not everyone a taste for novels. Also, a literary text may be able to communicate certain ideas better than an abstract philosophical treatise, and vice versa. Still, both novelist and philosopher may, as Brontë and Austin did, use differing genres to address identical problems and reach similar conclusions. The thoughtful justice in eyre struggling to align his judgment with the king’s expectations has an analogue in pensive Jane Eyre. As a woman novelist and a minister’s daughter who was denied interaction with the world of public affairs and the academy, Brontë shows through fiction that the problems of rational autonomy and legal constraint about which men write are also women’s problems.

IV. LAW’S FOUR CONCEPTUAL FACES

A. John Austin’s Jurisprudence

John Austin’s major contribution to jurisprudence is a series of fifty-seven lectures, the first of which was The Province of

79 Cf. Martha C. Nussbaum, Love’s Knowledge: Essays on Philosophy and Literature 7 (1990). Nussbaum contrasts abstract, theoretical philosophical treatises to literary texts:

[Al)ny style makes, itself, a statement: that an abstract theoretical style makes, like any other style, a statement about what is important and what is not, about what faculties of the reader are important for knowing and what are not. There may then be certain plausible views about the nature of the relevant portions of human life that cannot be housed within [an abstract theoretical style] without generating a peculiar implicit contradiction.

As examples of such “plausible views” incapable of being imputed via an abstract theoretical style, Nussbaum offers Marcel Proust’s belief that “the most important truths about human psychology cannot be communicated or grasped by intellectual activity alone”; and Henry James’ belief that “fine attention and good deliberation require a highly complex, nuanced perception of, and emotional response to, the concrete features of one’s own context.” Id.

80 But see Hugh F. Chorley, in Charlotte Brontë, supra note 2, at 45 (“Jane Eyre deserves high praise, and commendation to the novel-reader who prefers story to philosophy, pedantry, or Puseyite controversy.”).
*Jurisprudence Determined*, published in 1832. Philosophers view the lectures as classic expressions of nineteenth-century legal positivism, and as exemplars of the formalistic and analytic approaches to jurisprudence. The 1873 posthumous edition of Austin’s lectures included elaborate, technical-looking fold-out charts illustrating the interrelations among legal concepts and subjects. The “heavy, prosaic” style of Austin’s lectures lacks literary embellishments. As delicately described by Sarah Austin, his wife, Austin’s hyper-analytical lectures reflected “the severity of his taste and his habitual resolution to sacrifice everything to clearness and precision.”

Clearly and precisely stated in Austin’s writings is a catalogue of how Westerners commonly use the concept of law. According to Austin, “[a] law, in the most general and comprehensive acceptance in which the term, in its literal meaning, is employed, may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.”

The expression “law” has four primary designations in Austin’s work. He describes two of them as literal, two as analogical or metaphorical.

In one of its literal uses, “law” refers to the class of laws set by God: the *Divine law* or the *law of God*. Divine law, according to Austin, is often styled ambiguously and misleadingly the “law of nature” or “natural law.” “Law” is also used literally to apply to laws set by men: *positive law*, or *law existing by position*, that...
is, by sovereign imposition.\footnote{Id. at 87.} Divine law is literal law because it is the law which the Omnipotent employs to rule His intelligent creations. Positive law qualifies as literal law because it is the law used by political superiors to rule intelligent inferiors.

Under a third usage, this one “improper” and based on “close and striking” analogies to the aforementioned literal usages, “law” refers to \textit{positive morality}.\footnote{Id.} Positive morality consists of “rules set and enforced by \textit{mere opinion}, that is, by the opinions or sentiments held or felt by an indeterminate body of men in regard to human conduct.”\footnote{Id. at 87-88.} Austin defined positive morality to include customs, conventions, mores, “[t]he law of honour,” “[t]he law set by fashion,” and “[i]nternational law”: morality as it should be, or would be if it conformed to divine law.\footnote{Id. at 88.}

The fourth and final usage of “law” identified by Austin is the metaphorical or figurative use which he found responsible for deluging the field of jurisprudence and morality with muddy speculation.\footnote{Id. at 87.} “Law” is commonly used to refer to physical forces affecting the behavior of lower animals, plants, and inanimate objects: “Such is the case when we talk of \textit{laws} observed by the lower animals; of \textit{laws} regulating the growth or decay of vegetables; of \textit{laws} determining the movements of inanimate bodies or masses.”\footnote{Id. at 88.}

When used in its literal senses, “law” entails the existence of a sovereign superior whose general commands inferior subjects habitually obey out of fear of negative sanction. For purposes of the science of jurisprudence, Austin defined “law” to exclude positive morality and natural physical forces. But, along with divine law and positive law, Austin recognized the cultural significance of analogical and metaphorical law as features of normative reality that he believed limit human freedom.\footnote{Id. at 87.}

True to its positivistic label, the formal structure of Austin’s analytical jurisprudence insists upon a distinction between positive civil law on the one hand, and all other forms of law on the
other. Formally speaking, therefore, the positive law and “natural law” are distinct. Law is not simply an abstract principle of reason. It is not a precept of divinely inspired reason as Thomas Aquinas maintained. Law is a brute empirical fact, an act of an earthly sovereign, as moral or immoral as the sovereign chooses to be. Austin viewed the possibility that the obligations generated by two or more spheres of law would conflict as mainly theoretical. He believed, for example, that in theory a positive civil law could require of persons that which positive moral law abhorred. But he also believed that such instances of non-convergence were exceptional in modern, civilized societies. Consistent with these beliefs, Austin’s philosophical and political writings reflect a tendency toward conservatism.

Austin was not alone in believing in the virtual unity of normative order. His precursor, Thomas Hobbes, maintained an exceptionally strong version of this view. Hobbes wrote that the civil law consists of the commands of earthly sovereigns, but that the natural law is nonetheless “contained” in the civil law, the civil law “contained” in the natural law. For Hobbes, the reciprocal containment of natural and positive law entails that judges may interpret the commands of the sovereign as necessary by appeal to natural law. Continuing the positivist tradition of Hobbes and Austin into our own lifetimes, British philosopher H.L.A. Hart stressed the virtual unity of normative order in his doctrine that, given survival as an aim, there are “universally recognized principles of conduct” which may be considered the “minimum content of Natural Law.” That is, the “minimum

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97 J. AUSTIN, supra note 10, at 116–22.
98 Id. at 117, 122.
99 Austin was considerably less reform-minded than Bentham or Mill. He praised the English government of his day as “the most democratical [sic] of all governments, past and present,” more democratic than the United States, which permitted slavery. Yet he opposed universal suffrage and opposed Parliamentary reforms designed to increase the direct power of the lower and middle classes whose “interests and opinions” he believed the sovereign “habitually consulted.” J.S. MILL, RECENT WRITERS ON REFORM: AUSTIN'S PLEA FOR THE CONSTITUTION, 59 FRASER 489, 491–93 (1859).
content of natural law” is in fact embedded in the rules of positive law. In Hart’s view, that which autonomous, rational, self-interested individuals are likely to want for themselves and others is what the rules of law provide.\textsuperscript{102}

**B. Jane Eyre’s Jurisprudence**

The virtual unity of normative order—the perspective embraced by a long line of English legal philosophers that the laws of God, civil government, moral custom, and the physical world require virtually the same conduct of human agents in viable societies—is the perspective embraced by Brontë’s heroine. Indeed, Jane’s happiness in the novel comes only when she has recognized her own autonomy and yet reconciled herself to conformity with law in each of Austin’s four senses. Jane does not announce, “I am finally reconciled with law in each of four senses,” but her narrative shows that she has achieved such reconciliation.

Jane’s journey is a kind of “eyre.”\textsuperscript{103} The “sovereign” in whose name she journeys is neither her own impulses nor the whims of others; her “sovereign” is the four-faced canon of rules and principles that are conducive to happiness. Jane believes human individuals are subject to rules and principles that are not of their own design, but that nevertheless safeguard their rational self-interests. As a rational, autonomous judge with the moral equivalent of the “commission in eyre,” an individual may speak and apply the law of human happiness. However, under Jane’s jurisprudence not even a judge who acts under sovereign power has the authority to invent or ignore the law. Recalling a moment of self-criticism, Jane metaphorically refers to being “arraigned at [her] own bar.”\textsuperscript{104} But her point is that she is her own stern judge, not her own source of law.

\textsuperscript{102} Id. at 189. Cf. Ian Duncanson. *The Strange World of English Jurisprudence*, 30 N. IR. LEGAL Q. 207, 224 (1979) (arguing that jurisprudential analyses of English law are unconnected with the law’s actual government of individuals).

\textsuperscript{103} Cf. GILBERT & GUBAR, supra note 36, at 314, 342 (stressing Jane Eyre as “pilgrim”). See generally supra note 34.

\textsuperscript{104} BRONTÉ, supra note 4, at 140.
V. RETELLING JANE EYRE

The ground has now been laid for recounting the story of Jane Eyre in a way that will permit the unfolding of its implicit jurisprudence. In the course of retelling the story, I will introduce passages from the works of Austin and, to a lesser extent, Bentham. The philosophers' texts convey distinct theoretical understandings of law and related concepts. Many of these same understandings figure prominently in Jane's powerful narration of her experiences. They emerge from Jane's metaphorical and literal uses of a juridical vocabulary familiar to nineteenth-century philosophers, lawyers and Brontë's educated public.

Jane shares with Austin and Bentham a basic belief that liberty is a component of individual happiness and that legal constraints on liberty are necessary evils.\(^{105}\) Bentham wrote:

\begin{quote}
No law can ever be made but what trenches upon liberty: if it stops there, it is so much pure evil: if it is good upon the whole, it must be in virtue of something that comes after . . . . To make a law is to do evil that good may come.\(^{106}\)
\end{quote}

In one respect, Jane's narration shares the classically utilitarian dimension of Austin's and Bentham's thought. Jane assumes that happiness is the point of nomic order. Jane thus measures the worth of law by reference to its consequences for happiness. Remarkably, while Jane's words sometimes suggest the philosophers' concern for aggregate happiness and the caretaker's concern for the happiness of others close at hand, her narrative is primarily driven by concern for her own happiness.


Jane also shares Austin’s and Bentham’s conception of law as a product of sovereignty.\textsuperscript{107}

Every law or rule . . . is a command . . . .\textsuperscript{108}

Laws and other commands are said to proceed from superiors, and to bind or oblige inferiors. . . . [T]he term superiority signifies might: the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one’s wishes.\textsuperscript{109}

Every positive law, or every law simply and strictly called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is a sovereign or supreme.

The superiority which is styled sovereignty . . . is distinguished from other superiority . . . by the following marks or characters.—1. [T]he bulk of the given society are in a habit of obedience or submission to a determinate and common superior . . . . 2. That certain individual, or . . . [a] body is not in a habit of obedience to a determinate human superior.\textsuperscript{110}

It is manifest that the state (or sovereign government) is not restrained by positive law from dealing with all things within its territory at its own pleasure or discretion. If it were, it would not be a sovereign government . . . .\textsuperscript{111}

Hobbes believed that true sovereignty is unrestrained and indivisible.\textsuperscript{112} He also believed, problematically, that a sovereign


\textsuperscript{108} 1 Austin, supra note 10, at 88.

\textsuperscript{109} Id. at 96.

\textsuperscript{110} Id. at 220.

\textsuperscript{111} Id. at 841.

can remain sovereign while delegating power to, or recognizing power in, public and private actors.\textsuperscript{113} Austin held a similar view:

\textit{[A]ll things within the territory of the state are \textit{res publicae}, or \textit{belong} to the state . . . [T]hose [things], the enjoyment or use of which it leaves or concedes to determinate private persons, are commonly called \textit{res privatae}.\textsuperscript{114}}

Of rights existing over persons, and availing against other persons generally, I may cite the following examples:—[t]he right of the father to the custody and education of the child:—the right of the guardian to the custody and education of the ward:—the right of the master to the services of the slave or servant . . . [T]hese rights are rights \textit{in personam}: that is to say, they are rights answering to \textit{obligations} . . . which are incumbent \textit{exclusively} upon those \textit{determinate} individuals. In case the child or ward desert the father or guardian, or refuse the lessons of the teachers whom the father or guardian has appointed, the father or guardian may compel him to return, and may punish him with due moderation for his laziness or perverseness. If the slave run from his work, the master may force him back, and drive him to his work by chastisement.\textsuperscript{115}

Heads of households and private property owners in \textit{Jane Eyre} act, in a sense, both as sovereigns and for sovereigns. But the dependent wives, children, servants, employees, and poor relations appearing in the novel are subject to the “law” of household “sovereigns” in an additional respect: “[A] man is subject to any and to every sovereign who can make him suffer: whether it be in person (that is in body or in mind) [. . .] in reputation, in property, or in condition.”\textsuperscript{116}

Jane’s narration is not completely consonant with every aspect of the legal outlook of her philosophic contemporaries. For example, even as a child Jane is cognizant of the misery and degradation slaves can feel in a regime of legally enforced involuntary

\textsuperscript{113} \textit{Hobbes, supra} note 100, at 139. 204–05. Bentham shared this belief. \textit{See} Hart, \textit{supra} note 107, at 327.

\textsuperscript{114} 2 \textit{Austin, supra} note 33, at 841.

\textsuperscript{115} \textit{\textsuperscript{1}} \textit{Austin, supra} note 10, at 384.

\textsuperscript{116} \textit{Bentham, supra} note 106, at 102–03 n.4.
servitude. She accuses her cousin John Reed of being a "[w]icked and cruel boy . . . [,] like a murderer . . . [,] a slave-driver . . . [,] like the Roman Emperors." Her emphatic condemnation of the society that defines some people as slaves and as "things" contrasts starkly with Austin’s dispassionate insistence that

[i]t is not true that the Roman Lawyers ranked slaves with things. Or, if it be true, it is only true [in a limited sense]. And, admitting that the Roman Lawyers ranked slaves with things, it follows not that they were cold-blooded men, and intended to degrade and vilify the miserable slave. In styling the slave a thing, they considered him from a certain aspect: namely as being the subject of a right residing in another person, and availing against third persons. 

However, Jane cannot herself speak dispassionately about slavery. Unlike Austin, Jane communicates an understanding that a person who is neither literally a slave nor legally a thing can nonetheless feel like both. Indeed, Jane’s story sets forth how she escapes becoming a “thing” in that “certain aspect” defined by law as slavery.

A. Law as a Product of Sovereignty: Gateshead

In the opening chapters of Jane Eyre, Jane recounts scenes from the tenth year of her unhappy life among the Reeds at Gateshead Hall. Her parents, a poor clergyman and a disinherited gentlewoman, are dead. The orphan lives with the widow of her mother’s brother, John Reed, and three juvenile cousins, John, Georgiana, and Eliza. A spoiled teen-aged bully, John seeks out Jane for special abuse. Jane’s adoptive family treats her badly. Her aunt and female cousins prefer to ignore her. Bessie, one of the household servants, treats Jane with kindness; but the other servant, Abbott, shares the family’s disaffection.

Jane presents her life at Gateshead as an object lesson in the nature and abuses of law as a product of civil and domestic

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117 BRONTE, supra note 4, at 8.
118 1 AUSTIN, supra note 10, at 388.
sovereignty. John Austin’s account of the law illuminates the social order presented in the initial chapters of the novel. Law, Austin maintains, is the product of sovereignty, the commands of a superior to an inferior, backed by sanctions. For the Aust- 
nian positivist, the civil law of mid-nineteenth-century England prevails as the ultimate law of Gateshead Hall. Although this law is not recited with particularity in the novel, Brontë depicted it by implication.119 Consistent with well-established literary conventions, Brontë sets her (Jane’s) fictional autobiog- 
raphy in England’s actual legal society.120 Brontë’s contemporaries probably understood that their law was present in and constitutive of the novelist’s world of make-believe. Readers today may require 
knowledge of legal history to make complete sense of the world 
Brontë invokes.121

England’s monarchical sovereign is Gateshead’s sovereign. The 
Reeds are a proper, law-abiding family. They live wholly within the parameters of positive civil law. Mrs. Reed possesses 
just those rights and privileges a widow with children, including 
a male heir, would have been expected to possess. Although John

119 Cf. Kendall L. Walton, Pictures and Make-Believe, 82 PHIL. REV. 283, 288 (1973) (distinguishing the fictionally true from the fictionally false). Walton writes:

It would be desirable to have a generalized account of what it is for something to be fictionally true rather than fictionally false. But providing one would be enormously difficult . . . . Of course there will be instances in which it is hard to decide whether or not a proposition is fictionally true, just as it is sometimes difficult to determine what is (literally) true . . . . What determines the fictional truth value of a proposition varies with the proposition and with the context. In some cases fictional truths are linked to facts about the real world, to literal truths.

See also Kendall L. Walton, Fiction, Fiction-Making, and Styles of Fictionality, 7 PHIL. & LITERATURE 78–81 (1983) (contending that speech-act theory, particularly the idea that fictional texts are not vehicles of illocutionary acts, does not adequately explain fiction).

120 Cf. Kendall L. Walton, Fearing Fictions 75 J. PHIL. 5, 11 (1978) (Analogizing fiction to a game, Walton writes, “Principles of make-believe that are in force in a game need not have been formulated explicitly or deliberately adopted.”).

121 See THOMAS, supra note 56, at 7:

Reading . . . literary texts in the context of legal history can enhance an analysis of their ideology in a variety of ways . . . . [A] critic intent on ideological analysis cannot be content with recovering the surface meaning of a text but must reconstruct its historical horizon, in order to re- pose the questions to which its narrative is an imaginary solution. A knowledge of legal history can greatly facilitate this act of reconstruction.
Reed’s gambling and debaucherries lead him to ruin as an adult, there is no hint in the novel that Mrs. Reed and her children do not live in conformity to the minimal requirements of civil law. While Jane lives at Gateshead, the Reeds maintain their property, meet their civil obligations, and commit no crimes.

The English sovereign circa 1847, when *Jane Eyre* was first published, delegated sovereignty over the household to men. As Bentham wrote, “The mandates of the master, the father, the husband, the guardian, are all of them the mandates of the sovereign: if not, then neither are those of the general nor of the judge.”

Bentham was nevertheless reluctant to yield to the popular tendency to refer to the orders of the master to his servant, or a husband to his wife or child as “law.” Like Austin, Bentham urged that such uses were figurative.

In Brontë’s England, wives, children, and servants had some rights against husbands, fathers, guardians, and employers. However, men’s status within the household was superior as a matter of positive civil law and positive moral law. Indeed, feminists of Brontë’s era were already arguing that married women were nothing short of “slaves.”

For feminists, one of the most striking manifestations of this marital “slavery” was the fact that under the common law a wife was in many ways regarded as the property of her husband. A married woman could not sue or be sued unless her husband was also a party to the suit, could not sign contracts unless her husband joined her, and could not make a valid will unless he consented to its provisions. Further, a man assumed legal rights over his wife’s property at marriage, and any property that came to her during marriage was legally his. A woman’s personal property, including the money she might have saved before her marriage or earned while married, passed entirely to her husband for him to use and dispose of as he saw fit. Other laws

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122 Bentham, supra note 106, at 105.
123 Id. at 4.
consonant with coverture reinforced a husband's authority: he decided the family domicile, he had the right to correct his wife physically, and he determined how and where their children would be raised.

Aggravating a married woman's plight was the fact that it was extremely difficult for her to extricate herself from the bonds of matrimony. Prior to the Divorce Act of 1857 the only way to end a marriage other than by ecclesiastical annulment was by private Act of Parliament.

Thus as a ten-year-old child living in a private home, Jane's immediate sovereign is the sovereign of the household. The sovereign of England is the ultimate source of law for Jane, but the sovereign of Gateshead, designated by positive law and positive morality, is a source of law of greater immediate impact.

If the law of Gateshead applies to Jane at the direction of the English sovereign, who serves as the sovereign of Gateshead? Who is the proximate source of Gateshead's law? The elder Mr. John Reed is dead. It first appears that his widow serves as Gateshead's sovereign. In dealing with the outside world, Mrs. Reed alone acts on behalf of Gateshead. However, inside the household, she has a more ambiguous status. Her deceased husband's male heir is something of a rival for her authority.

The first paragraphs of the novel focus on Jane's inferiority to Mrs. Reed. The aunt appears to be the dominate source of external norms in the child's life. Mrs. Reed sets dinner at an "early" hour to suit her taste. Mrs. Reed prescribes long walks for the children, even on "chilly afternoons." Physically fragile, Jane resents the compulsory walks. The cold weather "nip[s] fingers and toes" and saddens her heart. Aunt Reed banishes dour little Jane from the family drawing room, describing the family circle as one of the "privileges intended only for contented, happy, little children." Like the despot whom Bentham once imagined, Mrs. Reed dispenses privilegia "for the gratification of

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[126] Brontë, supra note 4, at 5.
[127] Id.
[128] Id.
[129] Id.
[her] own particular passions or those of some individual favorite." Jane protests her exclusion. Jane's demand for an adequate account of why she should be turned out is the novel's first and stark demonstration of her sense of justice and injustice. The ideal of moral autonomy and moral justice demands such a rational accounting. Aunt Reed grants Jane no appeal. "Jane," she states, "I don't like cavillers or questioners." When it comes to Jane, Aunt Reed eschews due process. She expects her first word to stand as the final law. Reminding Jane that she is both rightless and an inferior, Aunt Reed nonetheless intimates fear of juvenile menace: "[T]here is something truly forbidding in a child taking up her elders . . . ." Not penitent for the usurpation implied by her request for due process, Jane sequesters herself behind the "red moreen curtain" of the window seat in search of repose. She takes with her *Bewick's History of British Birds*, a favorite from the household library, drawing sustenance from mental images it inspires of "solitary rocks and promontories" and frigid "forlorn regions of dreary space." Lacking kindness from all and feeling physically and emotionally cold, Jane is drawn to pictures of ice-encased "[a]lpine heights." It is winter, literally, under the natural world's law of seasons, when the novel begins, and Jane is in a metaphorically wintry season of her life.

Mrs. Reed "[i]s an exact, clever manager, her household and tenantry [a]re thoroughly under her control; her children, only, at times defy] her authority, and [laugh] it to scorn." Although Aunt Reed can usually dominate Jane, and order about her servants and daughters, her son is less plainly within her control. He "sometimes revile[s] her for her dark skin, similar to his own; bluntly disregard[s] her wishes" and tears her "silk attire." The latitude she extends him out of a surfeit of love undercuts her

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130 See BENTHAM, supra note 106, at 162.
131 BRONTÉ, supra note 4, at 5.
132 Id.
133 Id.
134 Id. at 6.
135 Id.
136 Id. at 30.
137 Id. at 12.
authority and grants him the power to exercise a cruel and arbitrary freedom.

Although Mrs. Reed can lay claim to sovereignty at Gateshead, her fourteen-year-old son is a close competitor. He clearly regards himself as Jane’s superior, as evidenced by his insistence that she address him as “Master,” by his demand that she leave her window seat, and by his striking her. His boyish knowledge of male prerogative under the English positive law of inheritance and customary moral law fuels his bold assertion of power within the household. He expects to stand where his father had stood. As John tells Jane, “all the house belongs to me, or will do in a few years.”138 His conduct fully anticipates the vesting of what Austin labelled the “contingent rights” of the eldest and only minor male heir.139 Brontë’s prose emphasizes John’s superior status. Compared to Jane he is older, larger, male, rich, and preferred by his mother.

Echoing Bentham, Austin defined the sovereign of a people as him to whom the bulk of a population is habitually obedient.140 It is to Master John that Jane is habitually obedient. It is he who puts the greatest fear in Jane. Jane in fact describes her relationship to John in starkly Austinian terms: “Habitually obedient to John, I came up to his chair.”141 John sits in a chair as a monarch in a throne, to declare judgment and execute corporal punishment. John is plaintiff, witness, prosecutor, judge, and jury. Just as Jane can get no accounting from her aunt’s judgment, she can expect none from John’s. “I ha[ve] no appeal whatever against either his menaces or his inflictions,”142 she reports. Jane is not merely a subject who must, to use Hobbes’ metaphor, chain her ears to the lips of a sovereign; she views herself as a subject slave on a short leash. Hobbes imagined that absolute sovereign power is consensual under the terms of a hypothetical rational compact; the child Jane fosters no such illusions.

Jane refers to a pattern of continual abuse at Gateshead. She relates two, of what the reader must assume are many, instances

138 Id. at 8.
139 supra note 33, at 859–63.
140 Id. at 220.
141 supra note 4, at 8.
142 Id.
of physical violence. Both occur on the same day and involve John Reed. In the first violent instance, John is angry because of Jane’s imprudent demand for an account of why his mother had turned her out of the drawing room, her subsequent escape to the window seat, her borrowing Bewick’s History of British Birds, and the defiant look in her eyes. John therefore demands that Jane leave the window seat to receive judgment and punishment for contempt of authority. John arrogates to himself the “double capacity of plaintiff as well as Judge” that Bentham seemed to think was warranted where, for example, “the act of delinquency in a penal concern happens under his eye, so that there is nobody can tell him any more of the matter than he knows already . . .” 143

John Reed’s “thick” 144 lips announce Gateshead’s civil and criminal law. He lectures Jane on the nature of property rights. Bentham’s words reflect John’s legal presumptions: “The taking or keeping, or using, or damaging a thing by one who is conscious of his having no title so to do . . . constitute[s] under different sets of circumstances so many extraordinary offenses against the law of property.” 145 John Reed assumes that he owns Gateshead and all in it. Jane owns nothing. The books Jane reads belong to him. By all rights she “ought to beg” for her survival. 146 John underscores Jane’s lack of identity as a person, and her inability to escape to a world beyond his control, by ordering her to “[g]o and stand by the door, out of the way of the mirror and windows.” 147 Master John, Jane’s self-appointed judge, literally throws the book at her.

John’s battery of Jane, drawing blood, leads to the second scene of violence at Gateshead: false imprisonment. Blaming Jane for the children’s scrap, Mrs. Reed sentences Jane to the Red Room, the cold, remote upper chamber in which the late Mr. Reed died. Jane’s imprisonment may indicate that Mrs. Reed

143 BENTHAM, supra note 106, at 304.
144 BRONTÉ, supra note 4, at 7.
145 BENTHAM, supra note 106, at 298.
146 BRONTÉ, supra note 4, at 8. Abbott shares John Reed’s sentiment. She exhorts Jane to obey her young master. But Jane resists the lesson. “Master! How is he my master? Am I a servant?” Abbott’s stinging response to Jane, the penniless orphan, is that “You are less than a servant, for you do nothing for your keep.” Id. at 9.
147 Id. at 8.
harbors a desperate wish that the ghost head of household return and subdue the perverse child, the “rebel slave,” whom neither his widow nor heir fully could subdue. 149

As Mrs. Reed orders, Bessie and Abbott carry Jane to the Red Room and place her on a stool. Jane springs from the stool and is “arrested” by Bessie and Abbott. 150 Bessie threatens to tie Jane down with Abbott’s garters. In a precocious display of self-discipline, Jane firmly attaches herself to her seat with her own hands rather than be tied down by “bonds, and the additional ignominy [they confer].” 151

Despite this, Abbott can see no signs of character in Jane. She is convinced that Jane is an “underhand little thing.” 152 Abbott’s deference to the moral law of Gateshead stems from a belief that it is backed up by the divine law of God, ideal moral law. She warns Jane that if she does not repent something bad will come down the chimney and fetch her away. More sympathetic, Bessie accounts for Jane’s youthful rebellion as a failure yet to understand the obligations of her inferiority:

“You ought to be aware, Miss, that you are under obligations to Mrs. Reed: she keeps you: if she were to turn you off, you would have to go to the poor-house.”

“... What we tell you is for your good, ... you should try to be useful and pleasant, then, perhaps. you would have a home here; but if you become passionate and rude, Missis will send you away. I am sure.” 153

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149 See generally Bender, supra note 60, at 204. The rationales for isolation in the penitentiary (for which the Red Room is a surrogate) included:

(1) a stress on the fearful but recuperative potential ... of solitude (or ... enforced silence); (2) the presumption that material circumstances will interact with consciousness to alter behavior and to reform character; (3) the premise ... that the socialization of individuals depends upon the mental representation of impersonal juridical process; and (4) the inference that the structuring of these processes ... requires systematic control of information and deployment of narrative resources.

150 Brontë, supra note 4, at 9.
151 Id.
152 Id. at 10.
153 Id.
Jane enters the Red Room physically wounded but capable of self-discipline: she sits on her own hands. Her self-discipline comes from understanding: she understands what is necessary if she is to avoid the most severe form of constraint she believes might come her way, Abbott’s garters. Jane knows she is treated badly because she is not a “sanguine, brilliant, careless, exacting, handsome, romping child.” Nature made her plain and pensive. The laws of physiognomy and psychology seem to justify Mrs. Reed’s indifference. Jane falls prey to essentialism. How could any woman be expected to love an “interloper not of her race, and unconnected with her, after her husband’s death, by any tie?” How could any woman be expected to be a “parent to a strange child” and to “see an uncongenial alien permanently intruded on her own family group?” Nature’s law opposes Jane, and Jane is naturally unhappy.

As a child, Jane views Gateshead’s law, and the English society that allows such domestic law to exist, as unjust. As it pertains to her, she views the law of Gateshead not simply as a little unjust, but wholly so. Jane is well-fed, clothed, and spared the need to work. She lives in the midst of wealth and privilege. Nonetheless, Jane views herself, hyperbolically, as a slave. In her own mind, she is an oppressed subject of arbitrary, immoral sovereignty.

Certainly, the early suppers, winter exercise, and social exclusion imposed upon Jane by Mrs. Reed do not rise to the level of the inhumane slavery practiced in nineteenth-century America. Moreover, Jane is too young to be a “slave” in the senses in which feminists of the period identified married women as slaves. Brontë made her heroine’s melodramatic self-identification as a slave more convincing by subjecting her to the brutal dominance of John Reed.

Jane’s sense of justice and injustice has been shaped by her untutored reading of history. She knows of the misdeeds of the Roman emperors Nero and Caligula. She tells her readers that

154 Id. at 12–13.
155 Id. at 13.
156 Id.
157 Id.
158 Bentham, too, made rhetorical use of Caligula to make a point about the “incompleteness” of so-called customary law. BENTHAM, supra note 106, at 282.
as a child she sees cousin John as like them—“like a murderer . . . like a slave-driver.” Jane describes herself as a rebel slave whose frustrated desire for fairness and respect make her “liable to strange penalties.” Jane’s self-identification as a rebel slave is linked to her inability to accept her social position under Gateshead’s law, a realm of private law that the public sovereign found “impossible” to penetrate.

By contrast, the kindly, compliant Bessie understands and accepts her own lot. Bessie has, as H.L.A. Hart might have said, “internalized” the law of Gateshead. She does not comply only or chiefly from fear of sanction as the young Jane does. While Jane loves Bessie for her stories and songs, Jane is baffled by Bessie’s quiet patience with the Reeds’ tyranny. Even patience strikes Jane as complicity.

Although Jane feels that her unjust treatment is wrong, she believes that it is natural. “‘Unjust!—unjust!’ said my reason, forced by the agonizing stimulus into precocious though transitory powers of rational cognition.” Yet the irrational forces of emotion and superstition compete with reason in the child’s mind as she grows colder and increasingly isolated balanced on her hands on her stool. Jane sees herself in the looking-glass as “like one of the tiny phantoms, half fairy, half imp,” rather than a human being. She begins to hope for the supernatural return of her dead uncle whom she imagines would punish those who perjure and oppress her. In the Red Room, Jane’s thoughts turn to running away and fasting until death to escape her problems. These images presage her actual response, years later, to the discovery of Rochester’s marriage to Bertha.

Jane’s suicidal thoughts lead her to fear she might, in fact, be the criminal others say she is. Jane feels alternately just and criminal, and correspondingly, alternately like a person and a thing. Jane refers to herself as “a heterogeneous thing, opposed

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159 Bronte, supra note 4, at 8.
160 Id. at 9.
161 Cf. Bentham, supra note 106, at 269 (“For the legislator then to take any separate notice of them [i.e., parents, masters, and other domestic power-holders’ “conveyances”] is impossible.”).
163 Bronte, supra note 4, at 12.
164 Id. at 11.
to [the Reeds] in temperament, in capacity, in propensities; a useless thing, incapable of serving their interest, or adding to their pleasure; a noxious thing. That others’ judgments about her are so different from her own indicate that they and she do not share the same normative world. The Reed household is, however, the whole of humanity known to the child. It follows that she can only view herself as an alien, a thing. Indeed, she concludes that only a “thing” would fail to love her family. Through these contorted syllogisms, alone in the Red Room, Jane views her moral difference and her lack of love as joint indicia of non-personhood.

Hysteria is the result of the contradiction in Jane’s thoughts and feelings. Jane screams out, but her pleas for forgiveness and an alternate form of punishment fall on deaf ears. Mrs. Reed lengthens her confinement. Left alone, Jane apparently suffers a “species of fit.” Strange dreams foreshadow the first encounter she will have with Edward Rochester and his dog Pilot in a field near Thornfield.

Jane’s fit and subsequent illness lead to further alienation from the Reeds. Mrs. Reed assigns Jane to isolated sleeping quarters, forces her to eat alone, and wholly bans her from the society of her family and their guests. Jane learns to love solitude and finds comfort in her doll. But Jane’s illness helps her to escape from the house-slave’s slavery of Gateshead. Her poor health leads Mrs. Reed, who did not think her good enough to warrant summoning the family physician, to send for an apothecary. It is the apothecary who suggests that Mrs. Reed send Jane away to school.

Mrs. Reed decides to send Jane to the Lowood Institution, a bleak charitable school for girls harshly run by the miserly and hypocritical Mr. Brocklehurst. Meeting Jane for the first time, Brocklehurst, whom Brontë described with vivid phallic imag-

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165 Id. at 12.
166 See generally Michael Foucault, Madness and Civilization: A History of Insanity in the Age of Reason (1965) (exploring the relations among confinement and attributions of insanity, unreason, and criminality in 16th- through 18th-century Europe).

Jane’s understanding of the importance of living en règle is reflected in the words of Philippe Pinel: “How necessary it is, in order to forestall hypochondria, melancholia, or mania, to follow the immutable laws of morality!” Id. at 197.

167 Brontë, supra note 4, at 15.
ery, quickly concludes that Jane is wicked. He promises Mrs. Reed that he will prepare Jane for an impecunious life of Christian service. Delighted to escape her condition of “slavery” at Gateshead, Jane finds courage in the aftermath of Mr. Brocklehurst’s visit to speak her mind and stand her ground against her aunt.

Jane’s pre-admission interview at Gateshead with Brocklehurst, the “black pillar” of Lowood Institution, signals that her bad reputation within Gateshead will follow her beyond its boundaries. Brocklehurst fully accepts Mrs. Reed’s testimony that Jane is deceitful. When Jane tells him she does not enjoy reading Psalms and that to avoid the wages of sin she will keep in good health to evade death, Brockelhurst construes her unorthodox replies as a shocking display of a sinful disposition. He is, however, more confident that he will make Jane good than that she will obstruct the mission of his gloomy school.

Once it is plain to Jane that Mrs. Reed will send her to Lowood, she feels a modicum of freedom from Gateshead’s law. Following her summons into the parlor to meet with Brocklehurst, Jane remains behind after his departure to wage a holy war for justice against her astonished Aunt. Overwhelmed by the child, losing their war of words, Mrs. Reed surrenders and flees. Jane is “winner of the field.” She feels her bonds burst. Thereafter, Bessie’s kisses, hugs, sweets, and songs can warm Jane despite her “habitual mood of humiliation, self-doubt, [and] forlorn depression.” “Even for me,” Jane recalls, “life had its gleams of sunshine.”

Jane’s life at Gateshead comes to a close as she acquires an increased sense of freedom. Her victory over Mrs. Reed indicates that she can achieve a kind of liberty among women. After this encounter, female authority never again deeply vexes Jane. Inspiring fear in her adoptive mother, she achieves self-sovereignty, autonomy, in the world of women. Jane is later able to return to

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168 See generally MOGLIN, supra note 3, at 112. (“The extraordinary phallic imagery makes of Brocklehurst a symbol of male sexuality and associates that sexuality with sadism and death.”) Brontë uses similar imagery in her depiction of St. John as “a prostrate column.” BRONTÉ, supra note 4, at 356.
169 BRONTÉ, supra note 4, at 26.
170 Id. at 32.
171 Id. at 13.
172 Id. at 34.
Gateshead on her own terms as a competent adult, knowing it is her duty to help Eliza and Georgiana lay their mother to rest. By the time of her return, Master John is already dead of his debaucheries, and Jane has no opportunity to learn to manage the masculine element in the family. She has, however, learned to live as an equal among women.

B. Due Process: Lowood

A few weeks after Brocklehurst’s visit to Gateshead and her victory over Mrs. Reed, Jane goes away to Lowood Institution. By the time Jane leaves Gateshead, she believes that what is just and unjust, right and wrong, is not necessarily what household authorities assert it to be. This simple lesson is a small one, but large enough and inevitable enough for a child of ten. At Gateshead, the positive morality of household authorities (backed by positive legal authorities) contradicted Jane’s ideal of justice. At Lowood, the authorities of yet another social institution, the school, clash with Jane’s developing ideals.

Lowood is where Jane acquires the social and intellectual skills that enable her to negotiate the adult world. Jane’s account of her experiences at Gateshead reveals that she was a passionate child with a mind of her own. She possesses a strong sense of injustice, expressed through the words, metaphors, and historical allusions available to an uneducated young intellect. However, Jane’s mind was not yet disciplined. Jane’s sense of injustice was unclearly rooted in either instinct, experience, reason, or secular and Christian training. Jane had no clear understanding of the appropriate response to injustice in the world. At Lowood Jane learns self-discipline and respect for the value of due process.

Lowood is a charity boarding school for girls. Initially, the reality of Lowood’s supposed charity is cruelty and heartless neglect. When Jane arrives at school, the conditions are harsh. Food is scarce, the educational regime severe. Again Jane is cold and forced to exercise out of doors in bad weather, only Lowood lacks the compensating luxuries of Gateshead. Although Brocklehurst spoils his own daughters, he preaches that meager comforts and vanities, even such comfort as heat and such vanity as naturally curly hair, compromise the virtue of Lowood girls.
Jane arrives at Lowood eager for respect and friendship, but Brocklehurst turns her accidental breakage of a writing slate into an occasion for a public trial. He condemns Jane in front of the entire school as ungrateful, a liar, and someone to be shunned. Brocklehurst’s style of justice is like John Reed’s. It is unilateral, swift, arbitrary, and without appeal. It is might behind a thin veneer of presumed moral, legal, and divine right.

Jane feels victimized by what she believes is the injustice of Brocklehurst’s slanderous punishment. However, Jane quickly discovers that she is not the only victim of such injustice. When Jane befriends Helen Burns and the young teacher, Miss Temple, she closely observes how these two women cope with injustice at Lowood.

Helen Burns patiently and passively accepts injustice. She readily embraces others’ characterizations of her faults and culpability. When a teacher unfairly punishes Helen for being slatternly, Jane tells Helen that she would rebel against such treatment. “I must resist those who punish me unjustly,” Jane explains. The “singularly deep impression [Miss Scatcherd’s] injustice seems to have made on [Jane’s] heart,” confounds Helen on whose feelings “no ill-usage so brands its record.” Helen attempts to teach Jane self-esteem and self-love through humility, by urging her to quell her rebellious impulses. Later, in one of the novel’s most poignant scenes, Helen and Jane fall asleep in the same bed. While the tiny rebel rises to see another day, the pale, passive beauty expires. Helen’s death from tuberculosis points Brontë’s audience toward the conclusion that Helen’s recommendation of uncritical, passive acceptance of the normative judgments of others is not an adequate coping mechanism for a young woman bent on living to maturity.

The soothing example of Miss Temple’s marble facade is more influential with Jane than Helen Burn’s philosophy of acquiescence. Miss Temple symbolizes the value of formal, rational legal process. In Miss Temple’s hands, Jane learns principles of administrative and judicial procedure. After cursory trial and judgment by Brocklehurst, Jane receives a hearing and appeal in Miss Temple’s chambers:

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173 *Id.* at 50.
174 *Id.*
175 *Id.* at 71–72.
Well, now, Jane, you know, or at least I will tell you, that when a criminal is accused, he is always allowed to speak in his own defence. You have been charged with falsehood; defend yourself to me as well as you can.\footnote{Id. at 61–62.}

Jane tempers her passion, subdues her resentment, and speaks calmly and convincingly to Miss Temple. Her calm recitation of the facts pave the way for her vindication: Jane’s story of the Red Room is confirmed by the apothecary, Mr. Lloyd, whom Miss Temple happens to know and to whom she writes on Jane’s behalf requesting information. Jane is publicly cleared.

Miss Temple also functions as Jane’s symbol of the possibility of equity within law. Temple’s quiet, rational defiance of the letter of Brocklehurst’s policy-making authority suggests that a woman can alleviate suffering and injustice without wholesale rejection of established norms. Brocklehurst has instructed that Lowood girls are to breakfast each day on porridge. When the cooks inadvertently burn the famished pupils’ ration of porridge one morning, Miss Temple decides that the girls must have something else to eat. Despite knowing Brocklehurst’s “porridge rule” and his formalistic, uncaring tendencies, Temple orders a special meal of cheese and crackers. She refuses to interpret his porridge rule as a “burned-porridge rule.” She interprets the porridge rule instead as a “porridge-or-if-burned-an-alternative-modest-meal rule.” When Brocklehurst discovers her “innovation,”\footnote{Id. at 54.} Temple takes immediate responsibility for acting without his express authority. She stands firm in her judgment when Brocklehurst launches into a \textit{pro forma} sermon about feeding the body at the expense of the soul. Temple’s purposive interpretation of Brocklehurst’s law is so reasonable that Brocklehurst can muster no meaningful counterargument. His attempt to trump Temple’s reasoning with nominally religious pap makes him look ridiculous. Brocklehurst refrains from using his considerable power to punish or counteract Miss Temple’s judgment, thereby implicitly conceding her good sense.

Jane abstracts important features of her philosophy of how to live responsibly within a system of rules from her observations
of Miss Temple. Accepting a system of rules entails accepting a certain number of, as it were, porridge rules, that is, rules that satisfy basic needs but not every desire. However, others, even one’s superiors, may harmfully interpret porridge rules as burned-porridge rules. One should not allow burned-porridge interpretations of porridge rules to prevail. One can rationally and calmly defend the rejection of burned-porridge interpretations. Reasoned, calm defiance can do more good in the long run than emotional outbursts of rebellion.

Through Miss Temple’s efforts Jane is freed from the burden of a bad reputation and sets out to earn a good one: “I from that hour set to work afresh, resolved to pioneer my way through every difficulty: I toiled hard, and my success was proportionate to my efforts . . .” Jane’s success matches her efforts in part because, as she discovers, she is not in fact a slave and because the material conditions at Lowood dramatically improve. After an epidemic of typhus kills many of Lowood’s pupils, public outcry leads to better conditions. Wealthy and benevolent subscribers build a new school. Most of Brocklehurst’s authority is transferred to men “of rather more enlarged and sympathizing minds . . . who [know] how to combine reason with strictness, comfort with economy, compassion with uprightness.” Jane flourishes in all the studies deemed appropriate to teach young women of her station, especially drawing and foreign languages.

Under the influence of Miss Temple, Jane develops an orderly, dutiful bearing and becomes a teacher at the school. But when her dear teacher and friend leaves Lowood, Jane is without inspiration for a regime of tranquility. She begins to feel restless and passionate again. Jane longs for liberty, for varied associates and experience. She settles, however, for the stimulation of “at least a new servitude.” Jane advertises for a post and accepts an offer to be governess at Thornfield. Being a governess in a private household nearer to London promises greater stimulation than life at Lowood affords. Jane surmises that the position will give her, at twice the pay, a life that is “respectable, proper, en règle.” Jane’s craving for stimulation is constrained by her
expressed desire to lead a life in keeping with moral and positive law.

C. The Utility of Law: Thornfield

1. The Fettered Gender

Thornfield is the third stop on Jane’s journey toward autonomous acceptance of normative constraint. She arrives with a degree of self-knowledge, but with little knowledge of Thornfield’s true character. She mistakenly believes Thornfield belongs to a proper, elderly woman named Mrs. Fairfax. In fact, Mrs. Fairfax is only the housekeeper and distant relation of Edward Rochester, the true owner of the estate. When Jane learns of Rochester’s existence, she has no idea that he is a sardonic, ugly man of forty with an immoral past. She does not know that her pupil, Adele, is her employer’s illegitimate daughter by a French actress. And although all of the servants know it, no one warns Jane that Thornfield is also home to a mad woman living in the attic.

Until Rochester’s arrival on the scene, Thornfield is as dull for Jane as Lowood had become. Adele, Mrs. Fairfax, the nurse, and the servants are decent people, but they are neither intellectually nor emotionally stimulating companions for Jane. The slavery rhetoric so characteristic of Jane’s account of Gateshead recurs in her accounts of Lowood without Miss Temple and Thornfield without Rochester.

As a child, Jane seemed to think of herself as a literal slave. As an adult drawn back again and again to the metaphor of slavery, Jane realizes that she is not actually a slave under English law. Although her lover once refers to her work as “governessing slavery,” Jane’s position as a wage laborer is not slavery and indeed contains “privileges of security and ease.” However, she is becoming “incapable of appreciating” these privileges and

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182 Only one servant, Grace Poole, and a local surgeon, Carter, know that this mad woman is also Edward Rochester’s wife. Id. at 272.
183 Id. at 238.
184 Id. at 102.
refers to “the viewless fetters of an uniform and too still existence.”\textsuperscript{185} Jane grows to appreciate that her fetters are her gender:

[W]omen feel just as men feel; . . . they suffer from too rigid a constraint, too absolute a stagnation, precisely as men would suffer . . . . It is thoughtless to condemn them, or laugh at them, if they seek to do more or learn more than custom has pronounced necessary for their sex.\textsuperscript{186}

Men with natures as “restless”\textsuperscript{187} as hers would have been permitted to seek “action.”\textsuperscript{188} They would have had the powers of vision to “reach the busy world, towns, regions full of life [Jane] had heard of but never seen.”\textsuperscript{189} They would have had access to “more of practical experience” and “acquaintance with variety of character.”\textsuperscript{190}

Jane’s recognition of gender inequity pits her ideals of justice against the positive morality and positive law of the wider culture. Her earliest nomic clashes were with particular individuals, in the private realms of household and charity school, whose authority over her was permitted by remote positive legal authority in the public realm. Previously, Jane had focussed on the evil acts of Mrs. Reed, Master John Reed and Brocklehurst. In the later stages of her life at Lowood and the early stages of her life at Thornfield, the nineteen-year-old teacher’s nomic clash is with the whole patriarchic structure of the society into which she was born and which she does not expect to change.

Jane inwardly complains of the tedium of her female roles until she is excited by her first encounter with Edward Rochester. In him she finds the stimulation she craves. One night walking alone near Thornfield she startles a horse ridden by a man followed by a dog. The man, who turns out to be Rochester, is thrown from the horse and slightly injured. The relationship between Jane and Rochester grows from reluctant to passionate. They fall in love, but do not immediately confess it, in part because of the differ-

\textsuperscript{185} Id.
\textsuperscript{186} Id. at 96.
\textsuperscript{187} Id. at 95.
\textsuperscript{188} Id. at 96.
\textsuperscript{189} Id. at 95.
\textsuperscript{190} Id.
ences in their ages and stations, and in part because Rochester is virtually engaged to the beautiful, aristocratic fortune hunter, Blanche Ingram.

Before Rochester can throw over Blanche and announce his love, Jane is called away to Mrs. Reed’s deathbed. To clear her conscience in preparation for meeting her maker, Mrs. Reed bitterly reveals that Jane’s paternal uncle had come in search of her some time before. This revelation is the first indication in the novel that Jane may have a family from whom she could inherit financial independence. Jane is polite and useful to her failing aunt and surviving cousins. Master John Reed is already dead. Georgiana wallows in selfish vanities. Eliza, ignoring Jane as she had always done, retreats into a passionless, solitary religiosity.

After Mrs. Reed dies and Jane has helped her cousins settle their affairs, she returns to Thornfield.

Upon her return, Jane and Rochester confess mutual love and decide to marry. Two things are striking about their betrothal. First, like her platonic relationship with Miss Temple, Jane’s romantic involvement with Rochester relieves her restlessness. Temple quieted Jane’s restlessness by providing a model of calm, Rochester by providing the stimulation Jane craves. Jane’s response to the companionship of Rochester and Temple suggests that she is not primarily troubled by the limitation of female roles as such. Jane is more troubled by the helplessness a woman can feel when she can do nothing within the confines of casa, chiesa, scuola to heighten her chances of finding happiness through friendship and romantic love.

Second, Jane does not press Rochester for a satisfactory account of the mysterious violence at Thornfield. Someone nearly burns Rochester to death in his bed; someone inflicts a bloody chest wound on the uninvited visitor whom we later learn is Rochester’s brother-in-law, Mr. Mason; someone rips Jane’s wedding veil in two on the eve of the ill-fated wedding. Yet Jane allows Rochester and his trusted servants their secrets.¹⁹¹

¹⁹¹ Such secrecy could be interpreted as oppressive control by Rochester as master of the manor. However, compare this with the Rivers’ allowing “Jane Elliot” to keep secret her identity as “Jane Eyre” when they took her in at Moor House. Openness was not a precondition of love, respect and friendship in the novel. See infra notes 223-224 and accompanying text.
2. Philosophical Crisis

a. Church and State

Rochester’s secrets are revealed to Jane by Mr. Briggs, a London attorney, and by Mr. Mason. Some months earlier Mason had been Thornfield’s uninvited guest, hurried away under cover of night by a cooperative local surgeon after receiving the chest wound Jane had helped to nurse. At the time, Jane suspected that the seamstress, Grace Poole, was the assailant. In fact, Bertha, Mr. Mason’s sister and Rochester’s legal wife, had inflicted the wound.

Aware of the pending marriage through Jane’s correspondence, Jane’s uncle sends attorney Briggs, accompanied by Mason, to prevent Rochester’s bigamous union with Jane. At the marriage altar, positive civil law, represented by Briggs, confronts ecclesiastical divine law, represented by Reverend Wood. Briggs confidently enters the house of God and calls its proceedings to a halt. Positive civil law asserts not so much its dominance over ecclesiastical law, but their unity. The proposed marriage is not acceptable in either realm.

Briggs arrives with “a paper” in his pocket and speaks to Rochester through the nose rather than the soul:

“My name is Briggs—a solicitor . . . .”
“And you would thrust on me a wife?”
“I would remind you of your lady’s existence, sir; which the law recognises, if you do not.”

. . . . Mr. Briggs calmly took a paper from his pocket, and read out in a sort of official, nasal voice . . . . 192

Jane’s characterization of Briggs as nasal suggests that lawyers trivialize matters of importance; that lawyers value procedure more than substance, confident in their power to coerce through legal formality. However, Jane later admits respect for the positive law, if not for its messengers.

192 BRONTE, supra note 4. at 255.
By contrast, Rochester is indifferent to any law but his own. He demands that Reverend Wood ignore Briggs and continue the wedding. Wood refuses, insisting that the wedding not "proceed without some investigation into what has been asserted, and evidence of its truth or falsehood."\textsuperscript{193} Rochester interprets Wood's refusal as the subordination of divine to civil authority. Yet Wood is simply acknowledging the virtual unity of the civil and ecclesiastical laws of marriage presupposed by the wedding ceremony:

\[\text{[I]f either of you know any impediment why ye may not lawfully be joined together in matrimony, ye do now confess it; for . . . so many as are coupled together otherwise than God's word doth allow, are not joined together by God, neither is their matrimony lawful.}\textsuperscript{194}

Briggs may presume the superiority of "paper" human authority, but Wood's cooperation is consistent with the premise of church superiority. Religion (church or divine law) and positive law stand united against Rochester's personal morality.

His plan to marry Jane thwarted, Rochester escorts Jane, the lawyer, and the minister from the church to an upper chamber of Thornfield to introduce his insane wife. Rochester challenges the wedding party to judge him badly for seeking a meaningful marriage: "[J]udge me, priest of the gospel and man of the law, and remember, with what judgment ye judge ye shall be judged.\textsuperscript{195}"

Yet, under the laws of humanity and of God, Briggs and Wood can easily judge Rochester harshly. In attempting to marry Jane, he was attempting to do what he had no right to do, for his unfortunate marriage to Bertha is as valid as any.

The novel assumes what legal historians know. The ecclesiastical and civil law of mid-century England did not permit Rochester to divorce Bertha simply because she had become insane. The legal consequence is clear: "[D]eprivations of reason . . . [are] not a cause of divorce, if they happened after marriage

\textsuperscript{193} \textit{Id.} at 254.
\textsuperscript{194} \textit{Id.}
\textsuperscript{195} \textit{Id.} at 258-59.
Bertha’s family had a history of insanity. Rochester’s father and brother knew about this history when they encouraged the financially advantageous match. But Bertha was not insane when Rochester married her. Rochester cannot premise divorce on the ground of Bertha’s insanity; nor can he premise divorce on the cruelty of her insane attempts to murder him. His only remedy is to continue to do as he had done since bringing Bertha to Thornfield: he can employ physical restraint: “[Mere cruelty is perhaps a cause for divorce]; but madness, dementia, positive disease of the mind, this is quite another matter. An insane man is likely enough to be dangerous to his wife’s personal safety, but the remedy lies in the restraint of the husband, not the release of the wife.”

Because Rochester’s marriage to Jane is a civil and religious impossibility, the couple is left to consider an alliance other than an official marriage.

b. Rules, Reason and Freedom

Rochester proposes cohabitation. Jane refuses. But why? Why does Jane refuse Rochester’s proposal that she live with him in affluent comfort at Thornfield or in France as his mistress? Becoming a mistress was not a widely approved choice for a well-bred Englishwoman, of course. But so what? What is approved by some may not be what is right. Life at Lowood and Gateshead had already demonstrated that social elites sometimes pervert morality. Moreover, accepting Rochester’s proposal for cohab-
tation promises Jane the things she longs for: reciprocal love, material comfort, new people, foreign places. Refusing Rochester means returning to the lonely drudgery of wage labor.

Rochester’s proposal tempts Jane. But she rejects it for reasons of prudence and principle. Jane keenly desires avoiding becoming the latest in Rochester’s long line of despised mistresses. Rochester considers “[h]iring a mistress . . . the next worse thing to buying a slave.”198 He views mistresses, like slaves, as “often by nature and always by position inferior.”199 Knowing the special pain of feeling like a slave, Jane does not want to risk seeming like one in her lover’s eyes. Jane also desires to adhere to general principles that will further her ends. She believes that the laws of marriage have a legitimate purpose, “given by God; sanctioned by man.”200 Like Austin,201 Jane seems to regard the principle of utility as an index of God’s law. However, the utility foremost in Jane’s mind is her own personal happiness, rather than the aggregate social happiness that Austin, Bentham, and Mill held up as the ideal goal of the law.

The conversation between Jane and Rochester after the cancellation of their wedding amounts to a debate about competing philosophies of law. It is not their first such debate. A discussion occurring on their third encounter, the abstraction of which had made Jane feel ignorant,202 reflected differences in their attitudes about rules and the rule of law. There, Rochester had announced that he was the source of the only normative constraints of any significance to him: “I know what my aim is, and what my motives are; and at this moment I pass a law, unalterable as that of the Medes and Persians, that both are right.”203 Rochester is prepared to believe that “unheard-of combinations of circumstances demand unheard-of rules.”204 Jane’s response shows that she is autonomous in her judgment, but a conservative who believes in the virtual unity of divine, civil, and moral law. She

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198 Bronté, supra note 4, at 274.
199 Id.
200 Id., at 279.
201 Id. at 120-21 (“To speak truth, sir. I don’t understand you at all: I cannot keep up the conversation. because it has got out of my depth.”).
202 Id. at 121.
203 Id.
believes that right principles are by and large already embodied in the established familiar rules. Rochester’s resolutions cannot be right “if they require a new statute to legalise them.” \(^{205}\) Human individuals are fallible and “should not arrogate a power with which the divine and perfect alone can be safely entrusted.” \(^{206}\)

Rochester hopes Jane will abandon principle in the face of suffering. Rochester’s imperative to avoid suffering carries weight with the former suffering inmate of Gateshead and Lowood. Jane provisionally embraces the argument against formalistic adherence to anti-bigamy and anti-adultery strictures. However, she quickly discerns the falsity of Rochester’s premise that breaching these strictures would be harmless. Rochester overlooks that she would suffer in the breach. Jane maintains her earlier expressed belief that her only chance for freedom is through living “en règle.” \(^{207}\)

Jane’s characterization of Rochester’s maxim of ad hoc lawmaking as “dangerous” reflects her sympathy for Austin’s utilitarian conception of the role of rules, principles and maxims in governing human conduct: \(^{208}\)

Speaking generally, human conduct, including the human conduct which is subject to divine commands, is inevitably guided by rules, or by principles or maxims.

If our experience and observation of particulars were not generalized, our experience and observation of particulars would seldom avail us in practice. To review on the spur of the occasion a host of particulars, and to obtain from those particulars a conclusion applicable to the case, were a process too slow and uncertain to meet the exigencies of our lives. The inferences suggested to our minds by repeated experience and observation are, therefore, drawn into principles, or compressed into maxims. \(^{209}\)

\(^{205}\) Id.

\(^{206}\) Id.

\(^{207}\) Id. at 77.

\(^{208}\) Jane describes Rochester’s maxim as “dangerous” because it is “liable to abuse.” Id. at 121. Interestingly, Austin considers and rejects the objection that utilitarianism is subject to abuse and warping by selfishness and evil. 1 Austin, supra note 10, at 112–13. He later concedes the charge for the sake of argument and defends utilitarianism against charges that it is “dangerous” by arguing in favor of a kind of rule utilitarianism. He does believe that act by act assessment would be inconvenient. See id. at 113–14.

\(^{209}\) 1 Austin, supra note 10, at 115 (emphasis in original).
To abandon such maxims as though one could view each situation wholly and successfully on its own terms is to deny one’s human fallibility and to pretend to the power or vision of a god.

Jane’s analysis does not end with her rejoinder to Rochester’s argument that she ought do what would cause him the least pain. Jane is drawn to hard-headed utilitarian thinking too. She and Rochester both seek their own happiness. They are, in a non-pejorative sense of the term, hedonists. But Rochester subscribes to the “act” form of hedonistic utilitarianism, Jane to the “rule.” Like Austin, Jane argues that laws and principles that have rational appeal before hardship and disappointment set in, for example, before we discover that our wives are insane and before we are driven nearly insane ourselves by the prospect of loss, are the truly binding ones we ought to follow. In words reminiscent of Austin’s, Jane explains to Rochester that:

“Laws and principles are not for the times when there is no temptation: they are for such moments as this, when body and soul rise in mutiny against their rigor; stringent are they; inviolate they shall be. If at my individual convenience I might break them, what would be their worth? They have a worth—so I have always believed; and if I cannot believe it now, it is because I am insane—quite insane . . . .”

It is important to note that Jane is not abrogating the responsibility of judgment wholly to others. She is not just saying that the rules are rules and everyone should follow them. Her words are that “I have always believed” that laws and principles “have a worth.” Their worth is that they protect us from pain and

210 Utilitarians generally advocated conduct or rules that maximize the happiness, pleasure or well-being of the greatest number. See, e.g., id. at 110. Neither Jane’s nor Rochester’s consequentialism is sufficiently other-directed to qualify as classical utilitarianism. I use the term “hedonistic utilitarian” below to describe a moral point of view which aims at maximizing the individual moral agent’s own good.

211 Roughly, act utilitarianism requires that one perform the act which, of the possible alternatives, would bring about the most happiness. Rule utilitarianism requires that one perform the act which comports with the best set of rules to govern action, i.e., those rules the universal adoption of which would maximize happiness. See J.J.C. Smart & Bernard Williams, Utilitarianism: For and Against 9-12 (1973).

212 Brontë, supra note 4, at 279. But cf. Milton R. Konvitz, Utilitarian Justice: Technical and Discretionary, 40 Phil. Rev. 69 (1931) (arguing that the utilitarian goal of the greatest justice for the greatest number may best be achieved by not adhering to general rules in exceptional cases).

213 Brontë, supra note 4, at 279.
evil better than our passions can. On what Austin termed “the spur of the occasion,” painful application of laws and principles can seem like evil, hegemonic constraint. However, laws and principles help to make us safe and free.\footnote{But cf. Leslie Green, \textit{Authority and Convention}, Phil. Q. 329, 345 (1985) (criticizing the conventionalist who views laws “as useful counsels of prudence, as wise bets, on balance, and all things considered”).}

Jane respects conventionalities but is not a mere toady to convention. This is apparent in her condemnation of those who mock women who try to “do more or learn more than custom has pronounced necessary for their sex.”\footnote{\textit{Brontë}, supra note 4, at 96.} But she believes her freedom and sanity require a life of respectability. She chose Thornfield, thinking it would be “a neat, orderly” home;\footnote{Id. at 77.} instead she discovers it is a home disordered by Bertha’s madness and Rochester’s passions. Jane leaves Thornfield and Rochester because she does not want to throw away everything she has worked for, for the sake of satisfying either her irrational, mad passions or his. Her rejection of Rochester spares him a second mad “wife” and her a second visit to the Red Room.

Jane never regrets her decision to run away. Later, settled in her pleasant life as village school teacher, she is glad that she adhered to “principle and law, and scornd and crushed the insane prompting of a frenzied moment.”\footnote{Id. at 316.} Recognizing her actions as a product of self-sovereignty, she thanks God for directing her to her correct choice. God’s direction spares her a life in France as a mistress—“a slave in a fool’s paradise at Marseilles—fevered with delusive bliss one hour—suffocating with the bitterest tears of remorse and shame the next.”\footnote{Id. at 279.} Jane concludes that she is better off as a “village schoolmistrress, free and honest, in a breezy mountain nook in the healthy heart of England.”\footnote{Id. at 279.} Yet Jane is lonely.

Rochester knew from their conversation at their third meeting that Jane would disapprove of efforts to reclaim his life and character by making up new rules, or breaking old ones. But he does not respect this philosophical difference. The equality
Brontë’s heroine ascribes to her relationship with Rochester must be discounted by the disrespect he shows for her philosophic values and by the special arrogance of his monumental deception about his marriage to Bertha. Rochester selfishly ignores Jane’s principles, preferring his own “law.” When Jane finds him out, he tries to persuade her to “transgress a mere human law—no man being injured by the breach,” rather than “drive a fellow-creature to despair.”

Jane’s ability to forgive Rochester’s deception so quickly can be read as a lover’s compassion for human moral frailty. Poverty and gender forced Jane to develop the strength of character needed to check the excesses of her own passion through autonomous submission to duty. Now she is able to show sympathy for others like Rochester who, though of fundamentally sound character, are less successful than she at autonomous self-constraint. Rochester’s selfishness and deception are great, but Jane can appreciate that the past misfortunes that cloud his judgment were also great.

Law is a definitive force in the society Brontë depicts. The disruption of Jane and Rochester’s wedding ceremony by the lawyer Briggs illustrates its power. So, too, does Reverend Wood’s refusal to proceed with the wedding ceremony. Yet, in a sense, neither the positive civil law nor the Christian Church have power over Rochester and Jane. Rochester has the financial means to escape the technicalities of marriage in his search for companionship. Rochester’s problem is not the law, but Jane, his tiny, indomitable love. Jane can do as she pleases. She is not constrained by civil or church law as such, but by her own better judgment about the firm, pragmatic value of each.221

D. Heaven Through Nature: Moor House and Morton Cottage

Jane’s dead mother comes to her in a “trance-like dream” warning her to flee Thornfield’s temptation.222 Knowing that she
has breached her master’s perverted law, Jane flees\(^\text{223}\) and for a short time lives as a beggar. On the brink of starvation, she is taken in at Moor House by two kind, intelligent sisters, and their brother St. John, a minister. This sibling structure parallels that of Gateshead; the parallel becomes even more obvious once it is discovered that Jane is the Rivers’ cousin.\(^\text{224}\)

Master John Reed is as selfish and physical a tormentor of Jane’s early life as St. John Rivers is a selfish and psychological tormentor of her later life. John Reed uses his rudimentary understanding of positive civil law and moral law to justify his interference with Jane’s autonomy, much as St. John Rivers uses his imperialistic interpretation of divine law and positive moral law to do the same.

The Rivers help Jane recover and obtain a post as mistress of a village school at Morton. This position comes with a little cottage house of her own. Jane lives independently under the name of Jane Elliot. On a visit to Jane’s cottage, St. John notices that she has signed one of her drawings “Jane Eyre.” He pieces together the facts to conclude that she is the missing heiress sought by his fellow clergy and that she is his own cousin. Jane insists upon sharing her fortune with each of her cousins. Jane had long hated the positive law that dictated her poverty. She welcomes the use of legal power to correct the law’s often harsh consequences. Jane’s belief (influenced by Miss Temple) that positive law does not foreclose equity leads her to give each of her cousins five thousand of her twenty thousand pound inheritance. Her sense of justice and family feeling demand it: “[I]t would torment and oppress me to have twenty thousand; which, moreover, could never be mine in justice, though it might in law.”\(^\text{225}\) St. John can see a certain justice in an equal division of Jane’s legacy, but still cautions her that it is “contrary to all custom.”\(^\text{226}\) Before accepting Jane’s generosity, St. John reminds Jane of her legal rights:

> “[T]he entire fortune is yours by right: my uncle gained it by his own efforts; he was free to leave it to whom he would:

\(^{223}\) “I had injured—wounded—left my master.” \textit{Id.} at 283.

\(^{224}\) The coincidence that the family of siblings on whose doorstep Jane happened to collapse were Jane’s actual first cousins is a heavy-handed plot device. So too is the exact parallelism of the family structure at Moor House and Gateshead.

\(^{225}\) \textit{Bronte}, \textit{supra} note 4, at 340.

\(^{226}\) \textit{Id.} at 341.
he left it to you. After all, justice permits you to keep it: you may, with a clear conscience, consider it absolutely your own.”

It is important to note that Jane does not believe she ought to refuse her inheritance altogether, or donate a portion of her wealth to poor friends or strangers. Jane’s “justice” keeps the family’s wealth within the family. This private generosity is well within the spirit of positive law.

Jane’s joy among the Rivers deteriorates in the face of St. John’s increasing menace. St. John is initially prepared to respect Jane and to love her from afar as a sister. With time, however, he wants to marry Jane. The strong rhetoric of slavery returns to the narrative as the learned cleric attempts to convince Jane that she is a woman “formed for labour, not for love.” Although Rosamond Oliver would gladly be his wife, Rosamond makes St. John’s flesh tremble with desire. St. John views Jane as better suited to join him on his spiritual crusade. He “prizes [her] as a soldier would a good weapon.” St. John offers Jane no real affection. The icy kisses of the self-described Christian philosopher signify his approval. They are “seal[s] affixed to [Jane’s] fetters.”

Determined to train her for missionary work abroad, St. John takes away Jane’s “liberty of mind.” He forces her to learn the “Hindostanee” language. In a manner reminiscent of her habitual obedience to John Reed, Jane is at St. John’s beck and call:

When he said “go,” I went; “come,” I came; “do this,” I did it. But I did not love my “servitude.”

Jane tries to please St. John because he has been kind to her, and because she believes in the worth of his work. But the cost to her is dear:

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227 Id.
228 Id. at 354.
229 Id. at 356.
230 Id. at 350–51.
231 Id. at 350.
232 Id.
I [feel] daily more and more that I must disown half my nature, stifle half my faculties, wrest my tastes from their original bent, force myself to the adoption of pursuits for which I [have] no natural vocation.233

By the time St. John reveals his plan and proposes to Jane, she feels an “iron shroud” contract around her.234

St. John offers Jane the inverse of Rochester’s offer. On account of love, Rochester wanted Jane to go abroad as his mistress. Without love, St. John wants her to travel abroad as his wife. Both offers lead Jane to fear virtual slavery. Jane refuses Rochester because she fears unhappiness associated with shame, the loss of self-respect, and eventual abandonment by her lover. She wants to refuse St. John because she fears unhappiness and the gradual loss of self. She resolves tentatively to go with him to Asia as a co-worker, but not as his wife. In that way:

I should still have my unblighted self to turn to: my natural unenslaved feelings with which to communicate in moments of loneliness. There would be recesses in my mind which would be only mine . . . [A]s his wife—at his side always, and always restrained, and always checked—forced to keep the fire of my nature continually low, . . .—this would be unendurable.235

Jane, who sometimes worries about her reputation, is reluctant to buy the argument that public opinion makes traveling with St. John other than as his wife impossible. Jane is willing to sacrifice personal happiness to satisfy the divine will that she become a missionary. But she is reluctant to make a sacrifice greater than necessary merely for the sake of appearances.

St. John persists in presenting his will as divine will, his law as God’s law. In contrast to the relatively mundane religious authority of Rev. Wood, the learned and saintly St. John represents the highest, most credible form of religious authority. His reading of God’s will is mediated through no human institution greater than himself. In Jane’s earlier confrontations with Roch-
ester, she had relied upon her own reason and experience to protect her from yielding to the will of her passionate social superior. Reason and experience told her what she must do to avoid the unhappy slavery of concubinage: obey the rules. But in her final meeting with St. John, Jane’s reason is nearly lost to her. She is nearly lost to herself. Acting in the name of God, St. John wears down Jane’s ability for independent thought and action.

St. John stands holding Jane in his arms, like a bird in the hand, awaiting words of submission. She is dazzled and overwhelmed. Desperate to find out whether divine law truly dictates marriage and missionary work, Jane makes a direct appeal to heaven:

I sincerely, deeply, fervently longed to do what was right; and only that. “Show me, show me the path!” I entreated of heaven.236

In that moment of pitched excitement Jane hears the voice of Edward Rochester calling her name. She cries back: “I am coming! . . . Wait for me!”237

The scene is perhaps the most curious in the novel. Jane’s repeated rational exchanges with St. John have clarified the issues. In the battle of the wills, St. John has all but won. Then Jane side-steps St. John and asks heaven itself for direction. She receives a response she knows those who read her story will regard as impossible. Moreover, the path heaven reveals leads her to do something she knows her readers will regard as wrong: return to her presumably married lover. Jane’s explanation for the impossible communication with Rochester is simple:

[I]t is the work of nature. She has roused, and did—no miracle—out her best.238

Breaking away from the clutches of St. John, Jane successfully commands the obedience from him that he had hitherto gotten from her:

236 Id. at 369.
237 Id.
238 Id. at 369–70.
It was *my* time to assume ascendancy. *My* powers were in play, and in force. I told him to forbear question or remark; I desired him to leave me: *I* must, and *would* be alone. He obeyed at once. Where there is energy to command well enough, obedience never fails. 239

At that instant, with that discovery, Jane becomes chief justice to the sovereign law of her private life. She speaks to St. John in the condescending language of Mrs. Reed. Hearing the voice of Rochester, breaking away from St. John’s clutches, Jane thanks God and hastily advances to Thornfield.

Jane hears Rochester’s voice in response to a prayer. But why should his distant cries lure her back to Thornfield when his face-to-face pleas were not enough to keep her from running away in the first place? Jane gives the impression that she simply knows that everything will be all right. She knows she can return without risk to her self and self-respect. Rochester’s voice is a reliable, but private, sign of what she ought to do. 240 In returning to Rochester with nature’s special permission, she knows that what she is doing will not prove wrong—legally, morally, or otherwise—and she is right.

Arguably, Jane reasonably could have decided to return to Rochester without such a sign. Once she has concluded that she could live and work near St. John without marrying him, she easily could have concluded that it would be fine to live and work near Rochester, despite his marriage to Bertha. Later, when she finds Rochester at Ferndean Jane playfully warns, “If you won’t let me live with you, I can build a house of my own close up to your door, and you may come and sit in my parlor when you want company of an evening.” 241 However, she makes this remark knowing Rochester has no wife. And even still, Jane the narrator worries that her readers might think that by offering freely to be Rochester’s neighbor and companion she “rashly overleaped conventionalities.” 242 So she reassures us that she made her proposal

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239 *Id.* at 370.
241 *Brontë,* supra note 4, at 382.
242 *Id.* at 383.
“from the idea that he wished and would ask me to be his wife.”

Apparently Jane does not in fact think living near Rochester without marriage, simply because she loves him, would be the moral or psychological equivalent of living near St. John, whom she does not love, to conduct missionary work.

Jane returns to Thornfield at the “supernatural” sound of Rochester’s voice because she reads the physically impossible sound as a veridical, though private, sign to her from God and nature that returning would be safe. God and nature, faith and sense, cooperate to inform her that no divine, moral, civil, or natural barriers block a reunion with her beloved. Earlier in the novel Church and State cooperated to tell her that she ought not live as Rochester’s wife. Rochester had not heard the voice of her reason nor had he seen the ghost of her mother that caused Jane to flee Thornfield. Likewise, St. John does not hear the voice of Rochester. These are private signs, spoken only to Jane, symbols of the exercise of independent judgment about the demands of normative order.

Jane’s willingness to follow what she believes heaven and nature will is an ultimate act of independence. The Reeds, Brocklehurst, Rochester, and St. John understood the law to require that Jane submit to terms and conditions of social life that she herself regards as intolerable. Jane takes on the elite interpreters of nomic order and wins. In early chapters of the novel, she grapples with the interpreters of positive moral law, civil law, and ecclesiastical law. In the final chapters she grapples with the interpreters of divine law and the physical law of nature.

St. John thinks he knows more about the natural and divine constraints on Jane’s life than she does. He characterizes her as by nature a solid work horse without passion and without a need for love. Her psychological nature, she knows, is passionate. She would wither under his reins. It had already begun to happen. Leaving him and having things work out for the best prove that she knows (her) nature better than he. She resists St. John’s characterization of her Christian duty. Refusing to marry him and

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243 Id.
244 Assuming that Jane believes that Rochester is still married, her return to him would entail a civil impediment only if they committed adultery, something which she is not contemplating at the time she receives this sign.
ultimately leaving him in response to a sign from heaven through nature proves that she knows better than he what (her) God demands. She can speak directly to heaven and heaven to her.

Jane’s narration makes clear that she believes, though skeptics and atheists may not have, that the Divine had worked through nature to reveal its, their, law. Jane hears Rochester’s voice. Rochester later tells Jane that he in fact spoke her name at precisely the time she believes she heard it cross the miles. Because nature does its best at her request, Jane instinctively realizes that she can return to Rochester unopposed by law and morality. Rochester’s voice is the “free and clear” signal. The danger has passed. In her understanding, every aspect of law is uniform in its permission, just as each had once been, also in her understanding, uniform in its prohibition.

E. Domesticity as Bliss: Ferndean Manor

Jane discovers that Bertha has burned Thornfield to the ground and leapt to her death. Rochester, who subsequently moved to his manor house at Ferndean, lost an eye and a hand trying to prevent Bertha’s suicide. His failure to save Bertha makes it possible for him and Jane to marry, which they do after he overcomes self-doubts about his worthiness.

Jane believes her story has a happy ending. If the ending of Jane Eyre is happy, it is not because Jane becomes especially free or Rochester is especially punished. Nothing in the novel suggests that Jane uses her financial independence and education to obtain the expanded social life and travel she once claimed she wanted and was denied on account of gender. Jane’s concerns about enslavement disappear, though she is still a female confined by her society to chiefly domestic roles. For better or for worse, Jane’s happiness comes to her through traditional caretaker roles. Although feminists of her generation argued that married

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245 Brontë was never able “consciously to define the full meaning of achieved freedom—perhaps because no one of her contemporaries, not even a Wollstonecraft or a Mill, could adequately describe a society so drastically altered that the matured Jane and Rochester could really live in it.” Gilbert & Gubar, supra note 36, at 369–70. Cf. Mary Wollstonecraft, A Vindication of the Rights of Woman (Carol H. Poston ed., W.W. Norton, 2d ed. 1988) (1792) (decrying the education of women which emphasized feminine beauty, rather than talent or virtue, rendering women weak, frivolous, and inferior).
women were *de facto* "slaves," Jane does not feel like a slave in the end.

Jane finds happiness in the tranquility of mind that can come from being loved by one’s husband. For Jane, “legal” love is enough. After her marriage it appears that neither her relationship with Rochester nor anything else in her life raises doubts about the unity of nomic order. Jane embraces domesticity as an act of moral autonomy. She is exactly as constrained by law as she wants to be. Jane complains no more about her lot in life even though, from the point of view of the positive law, her lot is Gateshead revisited.

Brontë scholars are fond of saying that Rochester is punished for his promiscuity, adultery, and attempted bigamy. He is blinded. He loses a hand. Thornfield is destroyed by fire. However, Rochester is not punished by the positive law. The positive English authorities regard his wrongs as either private moral wrongs, or wrongs of public import that occurred in foreign jurisdictions. Rochester is punished only by personal tragedy and misfortune. John Austin suggests two ways to think of personal tragedies as “legal” sanctions. They can be viewed as religious sanctions (properly so-called) stemming from breaches in the divine law or as natural sanctions (metaphorically so-called) without the intervention of any law other than the metaphorical law of physical forces.

Thus, blindness can be viewed as a divine sanction for Rochester’s breach of divine law in his attempted bigamy and adultery; the loss of his home is a natural sanction stemming from his failure to properly constrain Bertha. Austin’s own examples fit the circumstances of *Jane Eyre* perfectly:

> If a man were smitten with blindness by the immediate appointment of the Deity, and in consequence of a sin he had committed against the divine law, he would suffer a religious sanction through his physical or bodily organs.

> . . . If your house be destroyed by fire through your neglect[,] . . . , you bring upon yourself, by your negligent omission, a *physical* or *natural* sanction: supposing, I mean,

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246 See, e.g., *Moglen*, supra note 3, at 141.
247 1 *Austin*, supra note 10, at 212.
that your destruction of your house is not to be deemed a punishment inflicted by the hand of the Deity. 248

Rochester suffers losses, but it is easy to overstate their significance. He loses Thornfield, but he has Ferndean. He has money, including his inheritance from his father and elder brother. And he has money acquired through his union with Bertha. When he marries Jane, he acquires control over her money too. Rochester loses Bertha, but he does not want her. Jane is the wife he wants, and Jane he has. Rochester loses his vision, but gains some back in time to enjoy the faces of his children. He loses a hand but acquires a doting handmaiden, Jane Eyre.

VI. CONCLUSION

Jane's eyre is a journey from the rebellion of a passionate, precocious youth, to the self-disciplined, calculated conformity of young adulthood. Jane comes to believe that it is right and prudent to adhere to the "rules and principles" commanded by God, by civil society's positive law, by conventional morality, and by nature. She also comes to believe that her own powers of reason and observation are equal to or more adequate than those of her social superiors. A proper judge, she is fully equal to the task of apprehending the "rules and principles" of obligation that bind her.

Jane's journey is undertaken without the natural endowments of most heroines of the nineteenth-century novel. Unlike Jane Austen's Emma,249 for example, Brontë's Jane is neither handsome, rich, nor especially clever. She is the social and physical inferior of those with whom she must do battle about the fundamental terms and conditions of her existence. Jane's significant endowment is her morally autonomous character. It assures that she is successful at keeping both her social superiors and her own passionate, rebellious impulses at bay.

248 Id.
249 JANE AUSTEN, EMMA (London, John Murray 1816).
Our society can be viewed as entrusting to a corp of social elites the right to set and/or interpret its norms, its “laws.” These elites judge what the rules are and what they require. It is supposed that God’s commands may be known through the clergy; the sovereign’s through lawyers and judges; morality’s through aristocrats and other socially prominent persons; nature’s through scientists. Accordingly, Americans look to psychologists to tell us whether, for example, homosexuality is against the “law” of nature and to the courts to tell whether it is a “crime” against the law of the sovereign people. Our clergy pronounce whether homosexuality is ungodly, the socially prominent whether it is socially acceptable.

Jane’s resistance to the authority of social elites entrusted by English society to interpret nomic reality initially results in disapproval, isolation, and punishment. For example, she endures psychological torment in the hands of the self-deceived St. John, who believes he speaks for God and believes that Jane is by nature free of the passions he himself seeks to repress. Jane is punished by Mrs. Reed and disparaged by the haughty Blanche Ingram, social elites who purport to speak for social morality. But Reed’s selfishness and Ingram’s vanity blind them to the true requirements of customary morality, whose highest ideals are exemplified by Bessie, Miss Temple, and the Rivers sisters, self-possessed working women.

Jane’s resolve to resist is challenged from within as well as without. Her appreciation of human fallibility, her keen desire to do what is right, and her wish to give others their due, make her skeptical of her own powers of reason and observation. However, Jane eventually learns that, despite poverty and female gender, she can find a degree of freedom through education, self-discipline, and wage labor. She also learns that by holding her ground, by trusting her own rational judgment and perceptions, she can find the only kinds of friendship, family, affluence, and love worth having: those that are orderly and self-constructed.

Jane’s life poses a philosophical question: Is there unity of law? That is, is what God, positive law, positive morality, and nature demand of us the same? Is what is right and just in one normative sphere precisely what is right and just in all the others? Jane’s life responds with the same answer Austin’s philosophy gives: virtually yes. Assuming unclouded cognition and strong
characters, individuals can rely upon their own reason and senses to apprehend law and its unity.

Like much post-Hobbesian modern British legal positivism, *Jane Eyre* attributes the appearance of normative disunity to moral and epistemological defects. The Reeds, Brocklehurst, Lowood inmate Helen Burns, Rochester, mad Bertha, and St. John suffer limitations of character and cognition that lead all of them to misconceive their own duties and, some of them, to misconceive Jane’s. Like the philosophers’ texts, Jane’s narration of her story presupposes that civil law and divine or moral law are distinct; but it implores adherence to the rules of civil law. The morality that leads Jane to this conclusion is, I suggest, a self-interested, generically utilitarian Christian morality.

Jane’s journey ends when she overcomes any tendency to believe that social elites are better able than she to judge the meaning and requirements of law. The discipline of a basic education and good character make ordinary men and women as deserving and able as the wealthy, the aristocratic, and members of the learned professions to judge human obligation. One detects an anti-positivism in Jane’s democratic ideal: in the name of genuine natural law we should turn our backs to social superiors who expect obedience to their perverted positive “law.” This emphasis is the streak of egalitarian individualism and “originality” in Jane’s thought that shocked some of Brontë’s contemporaries.

Yet, so far as the jurisprudence of the novel goes, only the fact that the novel’s heroine began as a poor female could make this familiar philosophy radical.\(^{250}\) Jane’s story is rendered orthodox by her ultimate commitment to “rules and principles,” to a life that is “*en règle,*” to formal education, religion, work, marriage, and family responsibility. This orthodoxy is qualified by the imperative of *female* autonomy. However, much of the furor the novel provoked among Brontë’s contemporaries was centered on its frank depiction of Rochester’s sexual promiscuity and his attempt to corrupt his young governess through bigamy and adul-

\(^{250}\) *See generally* Thomas, *supra* note 56, at 7 (“story about the conflict between the individual’s need for freedom and society’s need for order provided through rule by law” is “as old as literature itself”). *But see* Gilbert & Gubar, *supra* note 36, at 338 (It is not Rochester’s byronic sexual energy but rather Jane’s “anger,” the work’s “rebellious feminism,” that “horrified the Victorians.”).
tery.\textsuperscript{251} If \textit{Jane Eyre} can be reduced to a central message, it is the imperative of autonomous judgment. All persons, even the frail, the poor, the ordinary, and the female, must, and therefore must be free to, ascertain and reconcile themselves to the requirements of the practical “rules and principles” of normative order. Still, the novel offered nineteenth-century patriarchy a kind of reassurance Mary Wollstonecraft’s, John Stuart Mill’s, and Harriet Taylor’s feminist writings did not;\textsuperscript{252} that the liberation of white, female property owners would make no difference to the fundamental structure of male-dominated society. Women would choose to use their freedom and wealth to sustain business as usual.

\textsuperscript{251} \textit{Charlotte Brontë}, supra note 2, at 33.
\textsuperscript{252} See generally \textit{Wollstonecraft}, supra note 245; \textit{John Stuart Mill}, \textit{The Subjection of Women} (1869); \textit{Harriet Taylor Mill}, \textit{Enfranchisement of Women} (1851).