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Adoption and the Limits of Contract in Victorian Adoption Case Law and George Eliot's *Silas Marner*

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ADOPTION AND THE LIMITS OF CONTRACT
IN VICTORIAN ADOPTION CASE LAW AND GEORGE ELIOT'S *SILAS MARNER*

Sarah Abramowicz¹

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INTRODUCTION

George Eliot's *Silas Marner* was one of first prominent Victorian novels to endorse the adoptive relationship. The traditional story of a displaced child began with a mysterious birth, and ended with the child learning her parentage and embracing the (typically higher) social station that this parentage entailed.² The plot of *Silas Marner* instead features a child, Eppie, who sees her adoptive parent, the poor weaver Silas, as her true father. At the end of the novel, when Eppie learns that she is the legal and biological daughter of Godfrey Cass, a man of higher social station and greater wealth, she rejects the chance to reclaim her "birthright,"³ and decides instead to stay with Silas, and to define her position in the world accordingly.

But even as *Silas Marner* embraces adoption, it condemns, and presents as dangerous, the legal mechanisms that an adoptive parent might use to formalize and protect a tie to an adopted child. With a fantasy of an adoption without law that saves both the adopted child and the adoptive parent, *Silas Marner* teaches that parent-child ties are created not by biology or by law, but by a child's memories and early experiences, and by the narrative through which the child makes sense of those experiences.

Perhaps unexpectedly, nineteenth-century English courts took a view of adoption, and of adoption contracts, that was remarkably similar to the attitude expressed in *Silas Marner*. In a series of cases that have received little scholarly attention and that complicate the traditional wisdom that legal adoption did not exist in England until the

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² Northrop Frye calls this plot the "foundling plot," and traces its evolution from foundational religious myths to English novels such as Henry Fielding's *Tom Jones* and Charles Dickens's *Oliver Twist*. Northrop Frye, *Fables of Identity* (San Diego: Harcourt Brace, 1951) 34.

³ George Eliot, *Silas Marner*, ed. Q.D. Leavis (1861; London: Penguin, 1985) 233. For all future citations from the novel, page references to this edition will be given parenthetically in the text.

Adoption Act of 1926,⁴ Victorian courts repeatedly awarded custody to adoptive parents. But in so doing, these courts at the same time refused to countenance the adoptive parents' contractual claims to custody, awarding custody instead on the basis that remaining with the adoptive parent would be most consistent with the adopted child's developmental narrative.⁵

Why did both *Silas Marner* and Victorian adoption case law reject adoption contracts, even while endorsing the adoptive relationship? And why did they do so at a time when contract law was at its height? It was in 1861—the same year that *Silas Marner* was published—that Henry Maine proclaimed in his best-selling *Ancient Law* that England was completing the last stages of a progression from “Status to Contract.”⁶ Maine's oft-cited formulation signaled the height of popularity of freedom-of-contract doctrine, and of the related trend of laissez-faire individualism.⁷ Why, then, the rejection of adoption contracts, not only by the potentially oppositional discourse of the Victorian novel, but by Victorian courts and jurists who typically favored the enforcement of contractual bargains?⁸ And what can this shared rejection of adoption contracts by Eliot's novel of adoption and Victorian adoption case law, and their shared preference for

⁴ As Michael Grossberg writes, summarizing the consensus view of legal historians:

Although adoption had long been part of Western legal culture in civil-law nations, English common law had refused to accept complete transfers of parenthood Although English legal historians Pollock and Maitland believed that early Britons . . . used a form of adoption, by the early modern era the stance of English common lawyers could be summarized in the terse statement of Glanville: “Only God can make a heres [heir], not man.”

Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: U of North Carolina P, 1985) 269. For an account of the passage of the first English adoption statute in 1926, see George Behlmer, “Artificial Families: The Politics of Adoption,” in *Friends of the Family: The English Home and its Guardians* (Stanford: Stanford UP, 1998) 272-315.

⁵ For a more extended discussion of the rejection of adoption contracts by Victorian courts, see Sarah Abramowicz, *Childhood and the Limits of Contract*, 21 Yale J.L. & Human. 37 (2009) (arguing that Victorian adoption disputes brought out a tension Victorian freedom of contract doctrine, which claimed that a legal regime grounded in contractual relations could displace status by birth, and the prevailing Victorian view of child development, which was that children were formed into their adult selves by their upbringing at the hands of their parents).

⁶ Henry Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas*, ed. Frederick Pollock, 10th ed. (1861; New York: Henry Holt, 1884) 165.

⁷ Writing at the end of the nineteenth century, A.V. Dicey argued that freedom of contract doctrine and laissez-faire individualism were at a peak of dominance in mid-Victorian England. A.V. Dicey, *Lecture on the Relation Between Law and Public Opinion in England During the Nineteenth Century* (London: Macmillan, 1905) 126-210, 399-465. Patrick Atiyah argues that laissez-faire was more powerful as a political philosophy than as an actual practice during the time period Dicey discusses, but agrees with Dicey both that freedom of contract doctrine was at a height of influence in Victorian England and that it was closely linked with the cultural dominance of laissez-faire individualism. P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford: Clarendon P, 1979) 231-37.

⁸ As I have noted in my earlier work, the judicial refusal to enforce adoption contracts was consistent with freedom of contract doctrine insofar as this doctrine held up the temporary space of childhood as the exception proving the rule of freedom of contract, such that a paternalistic approach to contract was justified where children were involved. But Victorian adoption case law, in which judges articulated the effect on children of being raised by one or another set of parents, problematized the broader freedom-of-contract claim that contractual freedom, and laissez-faire individualism more generally, was bringing about a shift from the status-based society of the past, in which identity was ascribed at birth, to a more fluid society in which identity was a matter of free individual choice. Abramowicz 37-100.

determining parentage with reference to the distinctly literary tool of a child's narrative of her development, tell us about the relationship of, and interplay between, law and literature?

By reading *Silas Marner* alongside Victorian adoption case law, and examining the resistance in both to bringing together childhood and law in the form of parentage contracts, we can better understand the connection between the literary trend exemplified by *Silas Marner*—the Victorian novelistic preoccupation with displaced children and their parentage—and a concomitant legal development: the construction of family law as an exceptional legal field in which the usual rules of contract law do not apply.⁹ These trends implicate, in turn, the larger legal trend that they work together to resist, but also, in so doing, to protect: the rise of contract. Legal writers such as Henry Maine claimed that the rise of contract had created a regime in which identity was no longer dictated by birth, but instead was a matter of free individual choice.¹⁰ This descriptive claim supported the view that individual freedom was best facilitated by a legal regime that enforced whatever bargains parties entered into among themselves.¹¹ At the same time that Maine presented contract law as offering a radical freedom of choice, however, both Victorian novels of adoption such as *Silas Marner* and Victorian adoption case law at once gestured toward, and worked to deflect attention from, the impossibility of ever leaving behind a world of status for one of contractual freedom.

I. *SILAS MARNER* AND THE “GLUE” OF PARENTAGE

⁹ Janet Halley and Kerry Rittich characterize this phenomenon as “family law exceptionalism.” Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 Am. J. Comp. L. 753 (2010). In her genealogy of family law exceptionalism, Halley traces the “construction of the legal order to render family and its law special, other, exceptional,” and sees this phenomenon as beginning with the emergence of the status/contract distinction in the period from 1765 to 1896, and the concomitant emergence of Domestic Relations as a distinct legal field that stood in opposition to the field of Contracts. Janet Halley, *What is Family Law? A Genealogy Part I*, 21 Yale J.L. & Human. 1, 3-6 (2011). While Halley focuses how the law of marriage and the more general category of domestic relations were framed by treatise writers, legal scholars, and educators, this article attends to a set of adoption custody cases that, in gradually excising contract from the law of parent-child relations at the same time that child custody first emerged as a distinct area of law, participate in the broader development that Halley identifies. The first English legal treatises to focus on child custody were published in the mid-nineteenth century: John Chambers's *A Practical Treatise on the Jurisdiction of the High Court of Chancery, Over the Persons and Property of Infants* (1842) and William Forsythe's *A Practical Treatise on the Jurisdiction of the High Court of Chancery, Over the Persons and Property of Infants* (1850). Notably, these years also saw the publication of a number of highly popular English novels that told stories of displaced children and their parents, including Charles Dickens's *Oliver Twist* (1837), Charlotte Bronte's *Jane Eyre* (1847), Dickens's *David Copperfield* (1850) and *Great Expectations* (1861), and the novel under discussion here, George Eliot's *Silas Marner* (1861).

¹⁰ Thus, Maine wrote that the expansion of “Contract” had created the result that “in innumerable cases where old law fixed a man's social position irreversibly at birth, modern law allows him to create for himself by convention.” Maine 295. He made the related claim that contract was creating “a phase or social order in which all . . . relations arise from the free agreements of individuals.” Maine 163.

¹¹ As Patrick Atiyah notes, under classical freedom of contract theory, “[i]t is not the Court's business to ensure that the bargain is fair.” Atiyah 402-05. A.V. Dicey, like many Victorian jurists, argued that this approach to contract enforcement facilitated “individual liberty” more generally. Dicey 149.

Silas Marner ends with a contest between Eppie's two would-be fathers: Godfrey, Eppie's biological and legal father, and Silas, who has raised the now eighteen-year-old Eppie since the age of two. The novel presents these two fathers as embodying two opposed modes of defining parenthood: law, on the one hand, and, on the other, the child's remembered narrative of her early experience. When he announces that he has come "to own Eppie as my child," Godfrey frames his "claim" in legal terms (230). He has a "duty" toward Eppie, he says, and she toward him, because of the marriage between Godfrey and Eppie's mother: "She's my own child: her mother was my wife" (230). Eppie rejects Godfrey's claim, and she does so by looking "inside" herself, to her internalized narrative of her upbringing by Silas, the adoptive parent "she's been calling her father every since she could say the word" (231). By the time we reach the moment in which Eppie makes this decision, it is clear which father should prevail. We've been prepared to understand law—the basis of Godfrey's claim—as a dangerously abstract and rigid mechanism for formulating family ties, and to value the narrative that links Eppie with Silas as a more secure mechanism for connecting parent and child.

A third element is in play, as well, in this contest between fathers: the role of "nature" in linking parent to child. Godfrey couples his legal claim with a natural one, adding, after referring to the marriage that makes Eppie his "own," that "I've a natural claim on her" (239). Though the novel catalogues the physical traits that Eppie has inherited from her biological father, such as her blue eyes and her blond hair, it contests Godfrey's assertion that his genetic tie to his child gives him a "natural claim" to Eppie that, as he believes, "must stand before any other" (230). By the end of the scene in which Godfrey and Silas vie for the position of Eppie's father, Godfrey's second wife, Nancy, is inclined to agree that the tie between Eppie and her adoptive father is itself "natural": "What you say is natural, my dear child—it's natural you should cling to those who've brought you up," she concedes, in language that echoes the organic imagery with which Eliot has characterized Silas's rearing of Eppie throughout the novel. Nancy is thus left arguing that if Godfrey has a superior claim to Eppie, this because he is Eppie's "lawful father" (234).

Silas Marner prepares the reader to agree with Nancy in dismissing Godfrey's assertion that he alone has a "natural" tie to Eppie, and to agree, accordingly, that the primary basis of Godfrey's claim is his legal tie to Eppie. The novel does so by indicating that our view of what is "natural" is constructed and culturally contingent, and then constructing the adoptive relationship between Silas and Eppie as itself "natural." Thus, an early scene highlights the culturally constructed aspect of the "natural" by dissecting the Raveloe characterization of Silas as not "natural" and "human," but alternately "mechanical" and "demon[ic]". The villagers base this assessment of Silas in part on their perception that his loom makes a "questionable sound . . . so unlike the natural cheerful trotting of the winnowing-machine, or the simpler rhythm of the flail" (52). A winnowing machine and a flail are quintessentially artificial: they are human tools created to impose order on nature. It is the familiarity of Raveloe with the winnowing machine that makes it sound "natural" to the villagers, and Silas's loom, in contrast, unnatural. The tendency to conflate the familiar with nature is reinforced by metaphorical thinking, which here links the (familiar, "natural") sounds of the winnowing machine with the (natural) trotting of horses.

Even as she presents “nature” as a construct, Eliot employs both metaphor and metonymy to construct Silas’s rearing of Eppie as natural. Silas rears Eppie in a literally natural environment (picking flowers, listening to birds, and collecting plants and leaves), and the process by which he raises her is described through metaphors of natural growth: we are told, for instance, that Silas cares for Eppie like “some man who has a precious plant to which he would give a nurturing home in a new soil” (190). The bond that this process of nurture creates is rendered in natural terms as well: Eppie, as she grows from a “nursling” and sends out her first “searching roots” (190), “clings” and “cleaves” to Silas as would a plant (173, 234).

Rather than frame the choice between Godfrey and Silas as one between nature and nurture, then, Eliot puts nature on both sides of the equation. This deflection of the nature/nurture divide is encapsulated by the running debate of Raveloe farmers about whether “breed was stronger than pasture” (153), a question they discuss in connection with both cows and humans. Just as “breed” and “pasture” are both natural images, Eliot takes a figurative approach to nature that characterizes Silas’s rearing of Eppie—which occurs in the same pastures as the disputed cows—as creating a connection that is no less “natural” than that between Eppie and her biological parent.

Commentators who characterize Eppie’s choice between fathers as setting up a variant of the nature/nurture opposition tend to overlook the role of law in constituting Godfrey’s tie to Eppie.¹² In so doing, they miss the work crucial work that the law does in *Silas Marner*, and that *Silas Marner* does in figuring the proper place of law and narrative, respectively, in defining family ties. *Silas Marner* stages a contest between law and narrative as opposing modes of creating parent-child ties. By reading *Silas Marner* from the perspective of this contest, we can understand the novel as structured around the opposition between law and narrative, and as indicating that in the legally shifting and newly mobile world of the nineteenth century, the safest refuge for a child’s sense of self was to define that self, not with reference to law, but with reference to the child’s own narrative of who she is and who her parent is, a narrative grounded in her memory of her early experience.

A. What Makes the “Glue” in Parentage? The Case Against Law

¹² Gillian Beer, for instance, describes Eppie’s choice of parent as one in which “nurture predominates over nature.” Beer, who notes that *Silas Marner* is the first of several novels in which Eliot presents “a conflict between natural parents and nurturing parents,” characterizes this dichotomy as one between “kinship” and “fostering.” Gillian Beer, *George Eliot* (Bloomington: Indiana UP, 1986) 108-46. Marianne Novy further refines the nurture/nature dichotomy by observing that, like “father,” “nature” is itself a contested term in *Silas Marner*, and that the distinction at stake in Eppie’s choice is more accurately described as one between nurture and not “nature” but “biology.” Marianne Novy, “Adoption in *Silas Marner* and Daniel Deronda,” in Marianne Novy, ed., *Imagining Adoption: Essays on Literature and Culture* (Ann Arbor: U of Michigan P, 2001) 35-53.

Other commentators refer to Godfrey’s legal claim to Eppie, but collapse law and nature into the term “blood,” and thus do not examine the novel’s interrogation of the distinct role of law in defining parenthood. Thus, Bernard Semmel characterizes Eppie’s choice as one between a father by “ascription,” or “blood,” and a father by “merit.” Semmel 24-26. Dianne Sadoff, who provides a Freudian reading of *Silas Marner* as incorporating the “scene of seduction” into the “family romance,” refers to the distinction between the fathers as one between “blood” and “the language of love.” Dianne Sadoff, *Monsters of Affection: Dickens, Eliot and Bronte on Fatherhood* (Baltimore: Johns Hopkins UP, 1982) 71-73.

Silas Marner leads up to Eppie's choice between two fathers by preparing the reader to devalue Godfrey's legal claim to parenthood. Much of this is done through the stories of the fathers' own relationships with their respective parents. The cautionary tales of Godfrey and Silas present law as a tool that disrupts and destabilizes, rather than one that generates and secures, the tie to a parent that anchors a child's sense of self. Eliot counters these stories of how law unsettles family ties with the story-within-the-story of the Lammeter marriage, a story that evaluates, and implicitly dismisses, the notion that legal formality is the "glue" that successfully binds together a family (101). The lesson of these three stories combines with the central story of Eppie's development to teach that the legal marriage between Godfrey and Eppie's mother is insufficient to securely bind father to child.

Godfrey's story demonstrates that the law can disrupt the very family ties it attempts to shape. The newly changing law of inheritance drives a wedge first between Godfrey and his father, then between Godfrey and his daughter. The perpetual threat by Godfrey's father to disinherit his son by will grounds the father-son relationship in fear and formality rather than security and affection. These paternal threats make Godfrey acutely aware that because his father's land is not entailed, his father is free to disinherit him:

'I'll turn the whole pack of you out of the house together, and marry again. I'd have you to remember, sir, my property's got no entail on it;—since my grandfather's time the Casses can do as they like with their land. Remember that, sir.' (123)

The "sword hanging over him" (77) of the threat of legal action renders Godfrey's relationship with his father unstable. Armed with a legal "sword" that empowers him to "cut off" (75) his son's inheritance, the father who should ground his son's identity instead becomes a force of dislocation and upheaval.

The disruptive power of the law in Godfrey's story stems from the disjunction between the stable and quasi-feudal law of the past and the emergence of new legal tools that could rewrite the status quo. Godfrey is born into a world that assumes he will inherit his father's position in accordance with the traditional practice of primogeniture. The Raveloe community identifies Godfrey as "the eldest," who, as such, "was to come into the land some day" (73). Godfrey's identity is defined, for himself and others, by his status as the Squire's eldest son, a status inseparable from the expectation that he will inherit his father's estate. The new legal regime of free testamentary disposition of property, however, enables Godfrey's father to disinherit his son. Eliot conveys this predicament—and what disinheritance would mean to Godfrey—through the metaphor of uprootedness:

The disinherited son of a small squire, equally disinclined to dig and to beg, was almost as helpless as an uprooted tree, which by the favour of earth and sky, has grown to a handsome bulk on the spot where it first shot upward. (77)

The tension between old law and new puts Godfrey at risk of being "uprooted" from the very basis of his identity.

The same legal "sword" that threatens Godfrey with "uprootedness" causes Godfrey to cut off his own child. Godfrey's father does not write a will disinheriting his

son, but his threat to do so leads Godfrey to sever ties with Eppie. Godfrey worries that if he reveals to his father the clandestine marriage that produced Eppie, then his father might follow through on his threats to disinherit him. Out of fear of being uprooted from the social position that is his earth and sky, Godfrey abandons the infant Eppie, and, when she appears in Raveloe at the age of two with a dead mother and no visible father, turns away from her rather than acknowledge her as his own.

If law drives Godfrey to separate from his child out of fear of uprootedness, it contributes to the actual uprootedness of Silas. For the fifteen years before the main action of the novel begins, Silas has lived an isolated life as a miser, his only interest in life the horde of gold coins that he has earned through his weaving. Silas's initial state of alienation stands as a warning of what can happen to one who is cut off from his parentage. In Silas's story, this uprootedness is driven by law. The fictional legal system at work in Silas's story, formed by the dissenting religious community of Lantern Yard, functions as a symbol of legal rigidity. The severe notion of "lawfulness" that Silas learns in Lantern Yard trains him to effect the very disinheritance of his parental "bequest" that threatens Godfrey:

He had inherited from his mother some acquaintance with medicinal herbs and their preparation—a little store of wisdom which she had imparted to him as a solemn bequest—but of late years he had had doubts about the lawfulness of applying this knowledge, believing that herbs could have no efficacy without prayer, and that prayer might suffice without herbs; so that his inherited delight to wander through the fields in search of foxglove and dandelion and coltsfoot, began to wear to him the character of a temptation. (57)

This notion of "lawfulness" drives Silas to sever his tie to his parentage by forgetting the wisdom "inherited" from his parent. The community of Lantern Yard subsequently finds Silas guilty of a theft that he did not commit through a highly formal legal procedure that involves the drawing of lots. When the rigid laws of Lantern Yard thereby drive Silas into "exile" at Raveloe and "unhinge" him from all that is familiar (63), Silas has been cut off by these same laws from recourse to the memory of his mother's teachings, and thus of his past. As a result, he becomes cut off from all human relations and focuses only on the accumulation of gold, "his life narrowing and hardening itself into a mere pulsation of desire and satisfaction that had no relation to any other being" (68). When, early on in the novel, Silas's gold is stolen, Silas is "[I]f left groping in darkness" (135), unable to forge human connections now that his "past experience" of fellow-feeling "had become dim" (141).

The stories of Godfrey and Silas show that law can sever the connections between parent and child, with pathological results. Eliot raises the question of whether law is the tie that binds even more pointedly with the story-within-the-story of the Lammeter marriage, which is embedded in the famous Rainbow tavern scene that bridges the stories of the two fathers and the story of Eppie. This story-within-the-story replicates the structure of *Silas Marner*. Just as *Silas Marner* narrates the formation of a tie between parent and child and then stops to question what constitutes this tie, the crux of the Lammeter story is the moment at which Mr. Macey, the Raveloe elder who narrates this

story, stops to ask what, exactly, is the “glue” that “sticks together” husband and wife (101).¹³

The particular “glue” with which Mr. Macey is concerned is the legal formality of the marriage contract. As Macey tells it, the young Mr. Lammeter was so eager to marry Miss Osgood that he held his wedding in January, not waiting for spring, as a reasonable man would. As a result, the parson was a bit muddled, having taken a few sips of spirits to fend off the cold. When it came time to marry the couple, the parson got the words backwards:

[H]e put ‘em by the rule contrary, like, and he says, ‘Wilt thou have this man to thy wedded wife?’ says he, and then he says, ‘Wilt thou have this woman to thy wedded husband?’ says he.

Macey, parish clerk at the time, worried obsessively whether this incorrectly articulated marriage vow was valid. He feared that, just as a bad glue will fail to hold things together, despite an intent to do so, incorrect words might fail to make a marriage stick:

I said to myself, I says, ‘Suppose they shouldn’t be fast married, ‘cause the words are contrary?’ and my head went working like a mill . . . and I says to myself, ‘Is it the meanin’ or the words as makes folks fast in wedlock?’ For the parson meant right, and the bride and bridegroom meant right. But then, when I come to think on it, meanin’ goes but a little way i’ most things, for you may mean to stick things together and your glue may be bad, and then where are you? And so I says to mysen, ‘It isn’t the meaning, it’s the glue.’ (101)

When Macey, frantic with worry over the question of whether the letter or the spirit of the marriage vow makes the glue in marriage, confronted the parson with this question, the parson laughed him off, saying that it’s neither—it’s the writing of the names in the parish registry.

So you see he settled it easy; for parsons and doctors know everything by heart, like, and so they aren’t worreted wi’ thinking what’s the rights and wrongs o’ things, as I’n been many and many’s the time. (102)

Macey’s story of marriage imports into *Silas Marner* the debate surrounding the 1753 Marriage Act.¹⁴ The Marriage Act, despite furthering both church and parental control over marriages by refusing to recognize private marriage contracts, was widely perceived as transforming marriage into a legal agreement, insofar as it ensured that, as one historian put it, “each route to matrimony was carefully hedged with legal

¹³ Efraim Sicher reads the debate over what constitutes a legal marriage in the Rainbow scene as a reflection of Eliot’s anxieties about both the legitimacy of her non-legal “marriage” with Lewes and her legitimacy as an author. Sicher argues that the “glue test” brings into question the power of language, both legal and literary, to bind together human society, and in the end “reasserts the authority of the novel” by presenting sympathy and natural feeling as the glue that bonds, and casting the work of fiction as the cohesive agent that “applies” this glue “to texts and people.” Efraim Sicher, “George Eliot’s ‘Glue Test’: Language, Law, and Legitimacy in ‘Silas Marner,’” *Modern Language Review* 94.1 (1999): 11-21.

¹⁴ *An Act for the Better Preventing of Clandestine Marriages*, 26 Geo. II cap. 32 (1753), ch. 1, ch. 14. For the debate surrounding the passage of this Act, see R.B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London: Hambledon P, 1995) 75-126.

requirements.”¹⁵ Because the Rainbow tavern scene is set around 1800, the wedding Macey describes would have taken place around 1780, relatively soon after the Act came into effect. The parson’s learned opinion that, as Macey puts it, “it’s the register that does it—that’s the glue” (102) seems a reference to the series of legal formalities that under the Act needed to be met to validate a marriage. The formalistic requirements of the Act included that each marriage be solemnized in a parish church, preceded by the publication of banns “according to the Form of Words prescribed by the Rubrick prefixed to the Office of Matrimony in the Book of Common Prayer,” and followed by registration of the marriage in a parish registry that met stringent formal specifications.¹⁶ The Act specified, for instance, that each page of this registry “shall be ruled with Lines at a proper and equal Distance from each other, or as near as may be.”¹⁷

With Macey’s story, Eliot mocks the notion that legal formalities are the foundation of family ties. As Macey seems to know, the fact that professional men can give a pat answer to the question of what makes a marriage “stick” does not mean that they have a greater understanding of the matter, but only that they rely on abstract legal formalities instead of giving the question the thoughtful consideration it requires. There is no rote answer, Eliot suggests, to the question of what makes a marriage “stick”; it is precisely through the turning of the question backwards and forwards that we can even begin to approximate an answer.

In addition to reinforcing the indictment of law established by the stories of Silas and Godfrey, the story of the Lammeter marriage offers narrative as an alternative to law, thus formulating the opposition that will recur in Eppie’s choice of parent. Eliot emphasizes that the story of the Lammeter marriage is a “narrative,” a “story” told to an “audience” (100, 102):

Every one of Mr. Macey’s audience had heard the story many times, but it was listened to as if it had been a favorite tune, and at certain points the puffing of the pipes was momentarily suspended, that the listeners might give their whole minds to the expected words. (102)

Eliot uses this scene of highly stylized storytelling to set up an analogy between storytelling and a legal proceeding, an analogy she drives home through the use of legal terminology. Both storytelling and law provide a ritualized mode of formulating the world: Macey and his Rainbow audience are preoccupied with “the rights and wrongs o’ things” (102); they work to establish the “truth,” and argue about what constitutes “proof” of contested facts (97-98); they refer, as judges do, to the standard of the “reasonable man” (103); Macey is questioned, as he tells his story, “according to precedent” (100). But, this scene suggests, whereas legal analysis relies on rigid and abstract legal forms—such as the precise words recited in a marriage ceremony or written in the parish register—storytelling is flexible, able to preserve the “precedents” of the past while incorporating them into the “rainbow” of new elements that emerge over time. A judge or other professional asked about the validity of the Lammeter marriage must

¹⁵ Outhwaite 126.

¹⁶ See *An Act for the Better Preventing of Clandestine Marriages*, 26 Geo. II cap. 32 (1753), ch. 1, ch. 14. The Act included an exception for Quakers and Jews, and also provided for marriage by license rather than in a church. See *id.*

¹⁷ *Id.*

respond instantaneously and decisively, as the parson does. But the storyteller can keep questions open, much like the landlord of the Rainbow tavern, whose accommodating refrain when his customers disagree is that “the truth lies atween you; you’re both right and you’re both wrong, as I allays say” (97).

That narrative, not law, is the “glue” that binds is exemplified by Macey’s mode of storytelling, and the position of his tale as the traditional, ritualistic centerpiece of the Raveloe gatherings at the Rainbow tavern. Rather than ground the Lammeter marriage on a single contractual moment, Macey’s storytelling turns the formation of family ties into an open-ended process, one that, as the story is retold over the years, incorporates the later developments that followed from the initial moment of marriage. This scene conveys that the solidity of the Lammeter marriage—which, as Macey narrates, founded a model household and produced two well-formed offspring—rests not on the legal ties between husband and wife, but on the fact that the family story has been woven into and accepted by an ongoing public narrative.

Eppie’s story unfolds in a manner that combines with the presentation throughout *Silas Marner* of legal ties as at best irrelevant, and at worst disruptive, to demonstrate that the legal connection between Eppie and Godfrey cannot be trusted to provide a solid foundation for a parent-child tie. Although Godfrey and his second wife, Nancy, believe that Eppie should accept her “birthright” (233) as Godfrey’s legal daughter, *Silas Marner* teaches that for Eppie to look to law in defining who her father is would render her as “disinherited” by law as Godfrey feared becoming and Silas, for a time, became.

The basis of Godfrey’s legal claim to Eppie is the clandestine marriage he had contracted with Eppie’s mother; as Godfrey puts it when he discloses his paternity, “[s]he’s my own child: her mother was my wife.” The novel has provided just enough detail about this marriage to establish that it fits perfectly within the formalistic definition of legal validity set forth by the Raveloe parson: like the Lammeter marriage, the marriage between Godfrey and Eppie’s mother was inscribed in the parish registry.¹⁸ But unlike the Lammeter marriage, Godfrey’s takes place away from his community: “the registry of their marriage . . . was a long way off, buried in unturned pages” (177).

¹⁸ Although Eliot does not mention Godfrey’s age in connection with his marriage, by specifying at the outset of Godfrey’s story that he is twenty-six, Eliot establishes that at the time of his marriage two years earlier, he was of an age when he could contract a legal marriage without parental consent, which was required under the 1753 Marriage Act to validate the marriage of those under the age of twenty one. See *An Act for the Better Preventing of Clandestine Marriages*, 26 Geo. II cap. 32 (1753), ch. 3, ch. 15.

Godfrey’s regretted marriage to a woman below his social station—an “ugly story of low passion, delusion, and waking from delusion” (80), resulting in the formation of a “tie” that “degrade[s] him” (77), a “yoke” by which he is “dragged back into mud and slime” (81)—is the very sort of marriage that the Marriage Act was intended to prevent, and that the opponents of this Act feared that it would foster by making marriage a mere contract rather than a sacred covenant. Godfrey’s story is a casebook scenario of the “clandestine marriage” described by a 1750 pamphlet in favor of the Act. The pamphlet describes a young man of the upper classes who, like Godfrey, in a moment of deluded passion makes “a clandestine, an unequal, an infamous, and . . . almost . . . unnatural match” that ruins his life:

Clandestine Marriages are generally rash Marriages; made without any calm Thought or Deliberation; and are the Effects of some sudden passions, and perhaps of the Heat of Wine. And when these Passions and Disorders are over, and the Parties return to their serious Thoughts, they conceive a Dislike to one another . . . such Marriages . . . interrupt that due Course of Justice, by which Liberty and Property can only be preserv’d.

Henry Gally, “Some Considerations upon Clandestine Marriages” (1750), reprinted in *The Marriage Act of 1753* (New York: Garland Publishing, 1984) 12-13.

Because Godfrey keeps his marriage secret, by the time he confronts Eppie, all that remains of the legal tie between Godfrey and Eppie's mother are disconnected legal forms: the inscription in the far-off parish registry and a wedding ring.

The result is that Eppie's experience of her legal father begins with an abstraction. Eppie is shown throughout her childhood the wedding ring that was found on her mother's finger. We are told that the ring, as a "symbol" of her mother's legal marriage, gives young Eppie her first "idea" of "her mother having had a husband":

[F]or a long while it did not even occur to her that she must have had a father; and the first time that the idea of her mother having had a husband presented itself to her, was when Silas showed her the wedding-ring which had been taken from the wasted finger, and had been carefully preserved by him in a little lacquered box shaped like a shoe. He delivered this box into Eppie's charge when she had grown up, and she often opened it to look at the ring: but still she thought hardly at all about the father of whom it was the symbol. (206)

When presented with a "symbol" and an "idea" of another father than Silas, the young Eppie rejects the intangible father these factors conjure up in favor of the father she knows by experience: "Had she not a father very close to her [?]" (206).

When Godfrey reveals himself at the end of the novel, Eppie identifies him with the legal symbols and abstractions by which his existence was first represented to her: Godfrey "had suddenly come to fill the place of that black featureless shadow which had held the ring and placed it on her mother's finger" (232). Eppie's perception of her legal father as abstraction itself—an abstraction generated by an abstraction symbolizing a legal tie—aptly captures the novel's rejection of legal formalities as a solid foundation for family ties.

B. What Makes the "Glue" in Parentage? The Case for Narrative

After using the stories of Silas and Godfrey to characterize law as an insufficiently stable basis for configuring parent-child ties, *Silas Marner*, in the final third of the novel, uses the stories of Silas and Eppie to suggest that the proper foundation for the parent-child tie is not law, but another cultural convention: the child's internalized narrative of her own development.¹⁹ The section of the novel devoted to Eppie's childhood is fairly short, and much of it is taken up with two scenes of recurring storytelling: we first see Silas piecing together his own story over the years with the help of his neighbor Dolly, and we then see Eppie and Silas telling Eppie's story over those same years. These scenes of storytelling, building upon the scene of storytelling regarding the Lammeter marriage, emphasize the work of narrative itself in creating and solidifying family ties, as well as the importance of a consistent narrative to each individual's wellbeing.

In the stories of Silas and of Eppie, Eliot presents "inward life" (56) as the terrain on which a child's identity forms. The nature metaphor of childrearing does its most crucial work to naturalize the adoptive parent when Eliot presents as "natural"—as an

¹⁹ As Dianne Sadoff writes, *Silas Marner*, along with *Felix Holt*, are novels about paternity that "insist on their fictionality, their nature as *stories*," and thus emphasize the role of language in constructing fatherhood. Sadoff 71.

organic process of “growth”—the process of Eppie’s mental development, and the parallel process of Silas’s recovery of his own developmental narrative.²⁰

As the child’s mind was growing into knowledge, his mind was growing into memory: as her life unfolded, his soul, long stupefied in a cold narrow prison, was unfolding too, and trembling gradually into full consciousness. (185)

Silas Marner teaches that most crucially at stake in the choice between two fathers is the parentage, and identity, formed in Eppie’s mind. And it suggests that narrative—the child’s internalized narrative of her development—is instrumental in encapsulating and preserving this development. As the novel presents it, Silas became rootless and alienated not because he was weak, or fell into trances, or was poor, but because he lost his memory of his childhood, and thus all connections to his parental origins. By losing all memories of the past, Silas stopped having thoughts of the future. He became cut off from human relations because he lost the capacity to understand his trajectory as a consistent developmental narrative. In the final part of the novel, he recovers his wellbeing by working over the years to piece together his “story” into a “narrative” that helps him to recover a “sense of unity between his past and present life” (66).

Silas’s story teaches that if law disrupts, narrative restores. Rendered rootless and alienated by the rigid laws that sever him from his memories of the past, Silas is restored to psychological health by his recovery of memory and re-establishment of a consistent narrative. The novel opens with an account of Silas’s prior history that attributes his initial state of alienation to his disconnection from his memories of the past, the product of the rigid “law” that first taught him to forget his mother’s teachings and then drove him into exile. Cut off from memories of the past, Silas is cut off as well from feelings, human society, and thoughts of the future: “He hated the thought of the past; there was nothing that called out his love and fellowship toward the strangers he had come amongst; and the future was all dark” (65).

Eppie initiates Silas’s recovery by reconnecting him to the memories of the past from which law had cut him off. When Silas first finds the golden-haired Eppie on his hearth, thinking, with his short-sighted vision, that she is his stolen gold returned, and upon touching her finds not “hard coin” but instead the “soft warm curls” of a child (167), it is by reviving his memories of the past that Eppie effects for Silas a reversal of

²⁰ As Thomas Pinney observes, George Eliot often uses the metaphor of a plant to convey the importance both of childhood experience and of the memory by which the adult maintains continuity with that experience:

The image George Eliot uses most often to express the idea of continuity in growth is the metaphor of the plant. The human personality is like a tree whose sustaining root is early experience, but the root can function only through the network of veins which is the memory.

Pinney notes that while Eliot “agrees with Wordsworth that the experiences of childhood are the ‘root of piety,’” her approach to childhood memories is less egotistical than that of Wordsworth, in that she focuses on the way in which memory, and the affections intertwined with memory, helps her characters to determine their “duties” toward others. Thomas Pinney, “The Authority of the Past in George Eliot’s Novels,” in George R. Creeger, ed., *George Eliot: A Collection of Critical Essays* (New Jersey: Prentice-Hall, 1970) 46-47. In my view, Eliot indeed adds a more social dimension to Wordsworth’s characterization of childhood memories, and does so in part by supplementing Wordsworth’s figuration of an internalized childhood with the figure of the internalized parent.

the Midas myth, transforming his world from one of cold materiality to one of human emotion and warmth. This moment of touch brings Silas back to a moment from his own childhood, reminding him of his little sister, about whom we learn about for the first time as Silas wonders: “Could this be his little sister come back to him in a dream—his little sister whom he had carried about in his arms for a year before she died, when he was a small boy without shoes or stockings?” (168) Silas is then overtaken by “a hurrying influx of memories,” including “a vision of the old home and the old streets leading to Lantern Yard—and within that vision another, of the thoughts which had been present with him in those far-off scenes.” With the return of his childhood memories, Silas’s feelings—the “old quiverings of tenderness” intertwined with those memories—return as well.²¹

Silas’s recovery requires not only that he regain his memory, but that he regain, as well, a sense of temporal progression toward the future. After “reawaken[ing]” Silas’s “memory,” and leading him to “blend” his past life with his “new impressions,” the next step by which Eppie leads Silas out of his meaningless life of “repetition” and “monotony” (68) is to set his mind once more on the path of development toward the “vista” (65) of the future:

The gold had kept his thoughts in an ever-repeated circle, leading to nothing beyond itself; but Eppie was an object compacted of changes and hopes that forced his thoughts onward, and carried them far away from their old eager pacing towards the same blank limit—carried them away to the new things that would come with the coming years, when Eppie would have learned to understand how her father Silas cared for her; and made him look for images of that time in the ties and charities that bound together the families of his neighbors. (184)

Silas projects a future in which he and his adopted child will look back on their memories of how he raised her, and learns to understand these future memories as a “tie” that will “bind together” father and daughter into a “family.”

Silas solidifies his recovery of continuity between past, present, and future by piecing together the events of his life into a narrative. This final step toward the reconstitution of Silas into a “new self” (201) occurs when he turns to his neighbor, Dolly, to help him make sense of his newly recovered memories:

[H]e recovered a consciousness of unity between past and present . . . and as it grew more and more easy to him to open his mind to Dolly Winthrop, he gradually communicated to her all he could describe of his early life. The communication was necessarily a slow and difficult process, for Silas’s meagre power of explanation was not aided by any readiness of interpretation in Dolly, whose narrow outward experience . . . made every novelty a source of wonder that arrested them at every step of the narrative. It was only by fragments, and at intervals which left Dolly time to revolve what she had heard till it acquired some

²¹ Rosemarie Bodenheimer, who reads Silas as a maternal figure onto whom Eliot displaced the concerns and desires about her own motherhood provoked by her new role as mother to the sons of George Henry Lewes, notes that the forgotten memories to which Eppie reconnects Silas center on his mother and little sister. Bodenheimer views this connection as contributing to the transformation of Silas into a maternal figure. See Rosemarie Bodenheimer, “George Eliot’s Stepsons,” in *The Real Life of Mary Ann Evans* (Ithaca: Cornell UP, 1994) 206.

familiarity for her, that Silas at last arrived at the climax of the sad story—the drawing of lots, and its false testimony concerning him; and this had to be repeated in several interviews, under new questions on her part as to the nature of this plan for detecting the guilty and clearing the innocent. (202)

In the course of repeated attempts to narrate his memories to Dolly, Silas pieces together his remembered past, forms the “fragments” of his past into a coherent whole, and makes sense of this whole by shaping it into a “story.”

The scene of Silas telling his story to Dolly presents storytelling as a process that helps to make sense of the world, and in so doing reinforces the opposition between narrative and law established by the Rainbow tavern scene. Both scenes present a storyteller telling a story that hinges on the inadequacy of law: Macey’s story at the Rainbow tavern recounts his anxiety over a bungled marriage vow, and the “sad story” of Silas reaches its “climax” with his attempt to explain to Dolly the false conviction that sent him into exile. With a disclaimer by Dolly that echoes Macey’s similar disclaimer in the Rainbow tavern scene, Eliot opposes the flexible, open-ended truth arrived at by the process of storytelling to the rigid, formulaic truth asserted by learned professionals:

‘Master Marner,’ she said, one day that she came to bring Eppie’s washing, ‘I’ve been sore puzzled for a good bit wi’ that trouble o’ yourn and the drawing of lots; and it got twisted back’ards and for’ards, as I didn’t know which end to lay hold on. But it come to me all clear like . . . but whether I’ve got hold on it now, or can anyways bring it to my tongue’s end, that I don’t know. For I’ve often a deal inside me as ‘ll niver come out’

‘But you can mostly say something as I can make sense on, Mrs. Winthrop,’ said Silas.

‘Well, then, Master Marner, it come to me summat like this: I can make nothing o’ the drawing o’ the lots and the answer coming wrong; it ‘ud mayhap take the parson to tell that, and he could only tell us i’ big words. But what come to me clear as the daylight . . . there’s things as we can niver make out the rights on. And as all we’ve got to do is trusten, Master Marner—to do the right thing as far as we know, and to trusten.’ (204)

Eliot suggests here that it is in its very failure to deliver clear-cut truths—Dolly’s open-ended verdict on Silas’s story is that “there’s things as we can never make out the rights on”—that storytelling helps to restore cohesion to a life disrupted by the false certainties of law.

Eliot follows the scene in which Silas and Dolly reconstruct Silas’s story with a parallel scene in which Silas and Eppie construct Eppie’s story. Building upon the opposition between narrative and law, this scene reinforces Eppie’s rootedness to Silas, and her distance from Godfrey, by framing Silas as Eppie’s father by narrative, and Godfrey—whose identity is known to the reader, but not to Eppie—as her father by law.²² Eppie is taught, early on, the story of how Silas came to raise her:

²² Thomas Pinney notes that Silas and Godfrey represent competing conceptions of Eppie’s past: Silas represents an “intimate, private past” viewed “in the light of affection,” and Godfrey represents an “abstract and legal conception of the past.” Pinney argues that while Eliot’s novels consistently represent “the idea that the good in one’s life is determined by the past,” Eliot’s conception of the past shifts, with *Daniel*

For it would have been impossible for him to hide from Eppie that she was not his own child; even if the most delicate reticence on the point could have been expected from Raveloe gossips in her presence, her own questions about her mother could not have been parried, as she grew up, without that complete shrouding of the past which would have made a painful barrier between their minds. So Eppie had long known how her mother had died on the snowy ground, and how she herself had been found on the hearth by father Silas, who had taken her golden curls for his lost guineas brought back to him. (205)

Eppie's understanding of her mother is incorporated into the story of how Silas came to be Eppie's father:

[S]he had again and again asked Silas to tell her how her mother looked, whom she was like, and how he had found her against the furze bush, led towards it by the little footsteps and the outstretched arms. (206)

Eppie thus learns to tell a story about her life that begins, not with the wedding between her legal parents, but with an alternative version of parental origins: the moment at which Eppie was "found on the hearth by father Silas."

Eliot injects Eppie's legal father into this scene of storytelling through the wedding ring of Eppie's mother, which Silas exhibits as he tells Eppie the story of how he found her. The wedding ring functions, implicitly, to establish that Eppie is not tainted by illegitimacy. The more emphatic function of the wedding ring, however, is to juxtapose the abstraction of the father-child tie established by law to the solidity of the father-child tie established by experience and reinforced by narrative. We are told that while Eppie often looked at the ring, "she thought hardly at all about the father of whom it was the symbol" (206), thinking instead of the man she calls first "dad-dad," then "daddy," and finally "father." As Eppie develops toward adulthood, she and Silas tell "again and again" the story of how he came to bring her up, a story constructed over the years by an ongoing dialogue between the emerging father and daughter. This story, rather than abstract legal symbols, becomes for Eppie the mode by which she formulates the parental origins that anchor her identity.

The story of self that Eppie learns to tell is grounded in the fact that her father is Silas, a fact that shapes Eppie's understanding of her future as well as her understanding of her past. At first Eppie projects a future in which she simply continues on indefinitely as Silas's daughter. When Aaron, Dolly's son, proposes marriage, Eppie tells Silas that "I don't want any change . . . I should like things to go on a long, long, while, just as we are" (209). But Silas teaches Eppie, as she taught him, that she cannot remain frozen in the past, and must "look for'ard" to the future:

[T]here's this to be thought on, Eppie: things *will* change, whether we like it or no; things won't go on for a long while just as they are and no difference. I shall get older and helpless . . . and when I look for'ard to that, I like to think as you'd have somebody else besides me—somebody young and strong, as'll . . . take care on you to the end. (210)

Deronda, from the private, internal past that Eppie looks to in determining her parenthood to the abstract legal conception of the past that Eppie rejects, but Daniel Deronda embraces. Pinney 49-50.

The future that Silas teaches Eppie to look forward to grows out of her past as his daughter. This is the case in a twofold sense. First, Eppie and Aaron plan to include Silas in their future home, with Aaron promising to “be as good as a son” (209) to Silas. Second, if marrying Aaron is an appropriate “end” to Eppie’s story—“the right thing to do” (210), as Silas puts it—this is because he is of the same social class as Silas.

When Godfrey appears to reclaim Eppie—and forces her to choose between two possible endings to her story—social class becomes newly relevant to the question of who Eppie’s father is, and thus of who she herself is. The most striking difference between Eppie’s two fathers is their dramatically opposed class positions: Silas is at the lowest end of the Raveloe class hierarchy; Godfrey Cass, the eldest son of the “greatest man in Raveloe” (71), at its pinnacle. Class itself is not a determinant of parenthood; poverty does not create the tie to Silas that renders him Eppie’s father. But the stark class distinction between Eppie’s two fathers helps to illuminate that what does create a parent-child tie is a child’s narrative understanding of her life. The distinction between the working-class Silas, on the one hand, and the upper-class Godfrey, on the other, provides a terrain of difference that reinforces the extent to which an ending as Godfrey’s daughter is incompatible with Eppie’s story. As Eppie tells Godfrey in rejecting his claim to fatherhood:

‘I can’t feel as I’ve got any father but one . . . I’ve always thought of a little home where he’d sit in the corner, and I should fend and do everything for him: I can’t think o’ no other home. I wasn’t brought up to be a lady, and I can’t turn my mind to it. I like the working folks, their victuals, and their ways. And,’ she added passionately, while the tears fell, ‘I’m promised to marry a working-man, as ‘ll live with father, and help me to take care of him.’ (234)

Eppie must reject Godfrey’s claim of fatherhood both because she has learned to think of her father as Silas, and because she has learned to understand her position in the world accordingly. To leave lower-class Silas for upper-class Godfrey would require Eppie to enter into a future unlike the one she had always imagined for herself. Eppie’s development thus far makes this psychologically impossible for her: “I can’t turn my mind to it.” That Eppie has agreed to marry a working-class man is the final proof that it is by now too late for her trajectory to change course.

According to the story of her life that she has learned to tell, Eppie’s choice between fathers is no choice at all. Asked to decide between her adoptive father Silas and her legal father Godfrey, Eppie, though she listens to their arguments, does not base her decision on any rational assessment of their respective claims to her:

Thought [was] very busy in Eppie as she listened to the contest between her old long-loved father and this new unfamiliar father who had suddenly come to fill the place of that black featureless shadow which had held the ring and placed it on her mother’s finger Not that these thoughts, either past or future determined her resolution—that was determined by the feelings which vibrated to every word Silas had uttered. (232)

Eppie’s decision is based not on “thoughts,” but on “feelings.” The form that encapsulates those feelings—and to which Eppie instinctively turns to present her decision to remain with Silas—is Eppie’s developmental narrative. Eppie announces her decision by declaring:

'I should have no delight i' life any more if I was forced to go away from my father We've been used to be happy together every day, and I can't think o' no happiness without him. . . . [H]e's took care of me from the first, and I'll cleave to him as long as he lives, and nobody shall ever come between him and me.'
(234)

Rather than respond to Godfrey's claim of paternity by sifting through abstract categories such as "nature" or "law," Eppie presents her decision in the form of a story, a story that does not decide, but simply tells, that Eppie's father is Silas.

II. FROM LAW TO NARRATIVE IN VICTORIAN ADOPTION DISPUTES

A. *The Turn to Narrative in Victorian Adoption Disputes*

Though Eliot places *Silas Marner* in a remote, pre-modern setting that gives it a fable-like distance from contemporary reality, this story of adoption was in fact quite topical when Eliot wrote and published *Silas Marner* in London in 1860-61. The scene in which Eppie chooses between two fathers resembles a scenario played out in London law courts throughout the 1850s and early 1860s. Judges in these cases faced a choice similar to the one that faces Eppie at the end of *Silas Marner*: a choice between the adoptive parent who had raised a child, and the original legal parent who, after allowing the adoptive relationship to develop, had decided to reclaim the child.

In the eyes of judges, at stake in these cases was the identity of the disputed children. Judges expressed an anxiety for these children's sense of self reminiscent of the anxiety expressed by Eliot in *Silas Marner*. The specter they raised was that children dislocated by such disputes might develop into rootless and alienated adults, pathological selves along the lines of the unrehabilitated Silas. Faced with increasingly frequent disputes between legal and adoptive parents, the English courts over the course of the nineteenth century developed a position similar to Eliot's in *Silas Marner*, holding that the best way to prevent a child's rootlessness and alienation in the growing social dislocation of industrializing England was to define parentage, not in accordance with formal legal rules, but with reference to the child's perceived narrative of his or her own life.²³

²³ It is unlikely that Eliot was aware of this legal-historical shift, which had not been discerned even by legal writers at the time she wrote. Eliot may have come across trial reports of individual custody disputes between legal and adoptive parents, which were published in *The Times*, but we have no evidence of this. What we do know is that when she wrote *Silas Marner*, Eliot was preoccupied with both adoption and the law of marriage. Eliot had since 1855 lived as the "wife" of George Henry Lewes, who was unable to obtain a divorce from his legal wife Agnes. In 1860, when the idea of *Silas Marner* first occurred to her, Eliot had just taken on the role of stepmother to Lewes's three adolescent sons, and held up the fact that they called her "mother" as evidence that she had a right to be called, as she had called herself since 1855, "Mrs. Lewes." Eliot thus used her nonlegal "adoption" of Lewes's sons to validate her nonlegal marriage to Lewes, and plays out this connection in the story of Eppie's choice between a legal and an adoptive father. Eliot, at 40, was the same age Silas is when he adopts Eppie. See Bodenheimer 189-231 and Gordon Haight, *George Eliot: A Biography* (1968; London: Penguin, 1992) 171-92, 329-37.

Prior to the mid-eighteenth century, English courts had intervened in the arena of child custody primarily to ensure that the guardians of orphaned children properly fulfilled the task of filling in the gap left by the father's death. The primary task of the guardian was to ensure that children reached a marital endpoint "suitable to that rank to which their birth intitles them."²⁴ The courts in these cases acted on the assumption that the role of the court was to protect the identity ascribed to a child at "birth" by legal parentage. The assumption that a child's proper identity was an unalterable given established at birth by legal parentage was no longer viable, however, in cases in which parentage itself was in question. Such cases began to emerge in the mid-eighteenth century, and became increasingly frequent over the course of the nineteenth century.

Judges confronting a choice between alternative parents began to understand both identity and parentage as constructed through a child's development. These judges began to present children as formed, not by birth into a set of familial relations defined by law, but over time, shaped as they grew into adulthood by the parents who raised them. The legal standard that judges articulated in making these decisions was that they would look to "the interests of the child."²⁵ To determine a child's best interests, judges pieced together and assessed a narrative of the child's development. Where a child's upbringing had changed, courts sought the outcome that would least disrupt the child's developmental narrative.

Central to this assessment was the notion of "expectations," a term that appears frequently in the case reports of eighteenth- and nineteenth-century custody disputes between legal and adoptive parents. A frequently cited rule was that "the Court will take care that [a] child shall be properly educated for his expectations."²⁶ The presence of "expectations" indicates that in many of these cases—just as in *Silas Marner*—the primary factors that distinguished alternative parents, and alternative possible identities for their children, were class and wealth: "Expectations" referred, literally, to an heir's expected inheritance. Upbringing in accordance with this sort of "expectations" meant

²⁴ *Smith v. Smith*, 26 Eng. Rep. 977, 978 (Ch. 1745).

²⁵ See, for example, the cases summarized in *de Manneville v. de Manneville*, 32 Eng. Rep. 762, 767 (Ch. 1804). The "interests of the child" standard derived from the earlier eighteenth-century cases regulating testamentary guardians. Courts in these cases acted "by way of analogy to the care and prudence of the natural parent" to ensure that guardians acted "for the benefit of the infant." See *Smith v. Smith* 26 Eng. Rep. 977, 978 (Ch. 1745); *Morgan v. Dillon* 88 Eng. Rep. 361, 365 (Ch. 1724).

²⁶ *Powel v. Cleaver*, 29 Eng. Rep. 274, 279 (Ch. 1789). Though this case involves what the lawyers refer to as an "adoption," and the list of parties at the top of the case report indicate that the child at the center of the dispute has changed his name to match that of his benefactor, the court skirts the issue of whether parentage has actually been transferred: "It is no where laid down that the guardianship of a child can be wantonly disposed of by a third person. The wisdom would be not to raise points on such a question, as the Court will take care that the child shall be properly educated for his expectations." For a case that more explicitly connects "expectations" to a transfer of parentage, see *Talbot v. The Earl of Shrewsbury*, 41 Eng. Rep. 259, 264 (Ch. 1840):

Is it not according to the usual practice of the world that the expectant heir should be brought up with the person from whom he expects so much; that as far as possible, he should be treated as the son of that person, and should look up to that person as his father?

The *Talbot* court found it "possible" in this case to award custody to the child's benefactor in part because the child's father had died, leaving only the guardian the father had appointed (who, as the legal stand-in for the father, had the legal right to custody), as well as the child's mother, to compete with the benefactor for the right to raise the child.

being educated and trained in accordance with the social station that a child had been led to “expect” by an adoptive parent who had made the child his or her heir.²⁷

In the early nineteenth century, the judicial use of the term “expectations” began to embody the newly narrative aspect of child custody determinations. Judges would look back at a child’s past to imagine the effect on the developing child of “expectations” of a certain sort of future. By the time a case found its way into court, the child typically had already spent time being brought up under the care of his or her adoptive benefactor. Courts faced with this scenario insisted that they would not award custody on the basis that the benefactor could provide the child with a better life, because this would mean that a parent could lose his or her rights to any stranger with a superior fortune.²⁸ But neither would courts necessarily give custody to the original legal parent. Instead, courts repeatedly held that once children had been brought up in accordance with “expectations” of a certain social station, a legal parent could not disrupt that course of development by wrenching the child away from his or her current situation.

An example is *Lyons v. Blenkin*, an 1821 case that was cited throughout the nineteenth century.²⁹ Here, a wealthy grandmother had, with the acquiescence of a widowed father, taken over the custody and education of his three daughters upon agreeing to pay for their upbringing and to provide for them by leaving them her property. The grandmother appointed the girls’ aunt to be their guardian, and the trustee of their estates, after her own death. The father agreed to this, as well, but after twelve years he changed his mind and sought to regain custody of his daughters. The court, looking to the “benefit” of the children,³⁰ refused to grant the father custody, not on the basis that one home was better than the other, but on the basis that the father had already allowed his children to be brought up in a manner that instilled in them “expectations” of a certain sort of life:

[T]he father . . . allowing them to be brought up with expectations founded upon a particular species of maintenance and education, which he himself cannot afford to give them . . . is not at liberty to say, I will alter the course of education of my children by applying more scanty means to the purpose, and I will not permit them to have the benefit of that sort of maintenance and education which they have hitherto had; and in consequence of which their views in life are very different from what they would have been without it. (844-45)

The judge rested his refusal of custody on his reading of the children’s upbringing thus far, finding that to return the children to their father would “interrupt” what until then had been a consistent developmental narrative:

²⁷ A court might note, for example, that a father had permitted his children “to be brought up with that *expectation* as to future station in life which their education has hitherto has led them to form.” *Lyons v. Blenkin*, 17 Eng. Rep. 842, 845 (Ch. 1821) (emphasis added).

²⁸ Nineteenth-century courts often cited the formulation of this rule set forth in *Ex Parte Hopkins*, 24 Eng. Rep. 1009, 1009 (Ch. 1732): “The father is entitled to the custody of his own children during their infancy . . . ; and it cannot be conceived that, because another thinks fit to give a legacy, though never so great, to my daughters, therefore I am by that means deprived of a right which naturally belongs to me, that of being their guardian.”

²⁹ 17 Eng. Rep. 842 (Ch. 1821).

³⁰ “It is always a delicate thing for the Court to interfere against the parental authority; yet we know that the Court will do it in cases where the parent is capriciously interfering in what is clearly for their benefit.” *Lyons*, 17 Eng. Rep. at 847.

[T]hese children have, with very little interruption, continued under the care and guardianship of their aunt. All their habits have been acquired under the roof of their aunt; all of their connections have been formed under their aunt; and it appears to me that the father has so far given his consent to this course of education as to preclude him from saying that he shall now be permitted to break in and introduce a new system of education, which cannot be consistent with the system to which they have been habituated. (847)

According to the judges in these cases, wealth did not itself determine custody, but it did play a role in establishing which of two contending parental figures would provide the most continuous conclusion to a child's course of development. Similarly, in *Silas Marner*, wealth is crucial to conveying the gap between the child's adoptive past and the future she would have if suddenly returned to her legal parent. Eliot takes the logic of "expectations" to its extreme by reversing the class scenario of the legal cases, providing Eppie with a poor adoptive father and a wealthier legal father. Eppie, of course, does not choose Silas because poverty is inherently preferable to wealth; she does, however, choose him in part because her "expectations" as his child make the change to a wealthy lifestyle a disruptive one:

'I've always thought of a little home where he'd sit i' the corner, and I should fend and do everything for him. I can't think o' no other home. I wasn't brought up to be a lady, and I can't turn my mind to it.' (234)

Like the daughters in the *Lyons* case, Eppie has been raised "under the roof" of an adoptive parent who because of his social class has taught Eppie "views in life [that] are very different from what they would have been" had she been raised by her legal parent. In both instances, differences in wealth are crucial to conveying the "break" in her life that a return of the adopted child to her legal parent would constitute. Eliot's exaggerated scenario, in which the child chooses between a poor weaver and a wealthy aristocrat, brings out that class difference is a convention that functions to convey the differences between two potential parents. By reversing the convention of class difference, Eliot expresses what courts articulate but in practice deny: that a tie to a parent-figure is more important to a child than material wealth.

In the 1850s and 1860s, the psychological aspect of the child's developmental narrative became more pronounced, in a series of disputes between parents and third parties of different religions.³¹ In determining whether it was "too late" for a child's development to change course, courts began to speak of the child's earlier upbringing in terms of the religious "impressions" that a parent-figure had made on the child's mind. As courts began to associate parenting with mental impressions, they at times employed a metaphor of psychological rootedness similar to the one Eliot presents in *Silas Marner*,

³¹ Most of these cases involved a dispute between a Roman Catholic and a Protestant. Whereas eighteenth-century courts explicitly favored parents who would rear their children in the Church of England (in fact it was illegal until the early 1800s to educate children as Catholics), nineteenth-century courts rejected attempts by litigating parents to appeal to anti-Catholic prejudice. Thus, for example, in *Talbot v. The Earl of Shrewsbury*, 41 Eng. Rep. 259, 265 (1840), the court, in awarding custody to a Catholic rather than to a Protestant, noted that "the law is now changed," and declared that the choice between the two religions mattered less than that the child believe firmly in one or the other: "Everyone must admit that it would be the most fatal thing in the world for a child not to have a religious education."

figuring parenting as a process that “plant[s] in the mind of the child” the beliefs and memories that become the foundation of the child’s adult self. Courts framed the central question in these cases as whether the initial “impressions” made on a child’s mind by a parent could still be “effaced” without incurring the “dangerous” situation of a child whose early impressions were “root[ed] up” too late for new ones to take hold. When judges felt that the impressions made on a child’s mind were sufficiently “deep,” they awarded custody to the parent who had made those impressions, on the basis that a return of the child to the legal parent “might end in unsettling his existing impressions and substituting no fixed impressions in their place.”³² The worst-case scenario that courts in these cases worked to avoid was that children severed from their “primal recollections” might grow up to become adults who suffered from the pathological lack of conviction of which Eliot provides a paradigmatic illustration with the uprooted Silas Marner.³³

By the mid-nineteenth century, the English courts were already progressing toward the rule that would be famously articulated in 1893 in the case of *Queen v. Gyngall*.³⁴ The *Gyngall* court held that a judge determining custody should take into account the “ties of affection” that a child had formed, even if this meant denying custody to the original legal parent. The *Gyngall* court stated that while in general, “the best place for a child is with its parent,” this was not necessarily the case once a child had already been raised by an adoptive parent:

This child is not a mere infant; if she were only six or seven years old the case would be very different. [I]t is not a case of attempting to take away a child from its mother; it is a question whether a child who has been away from her mother for a long period should be forced to go back to her. If a child is living with a parent it may be a very serious dislocation of an existing tie to remove the child from the custody of the parent. But suppose the case of a child which had been living from infancy with a grandmother or an aunt, no one would say that, when the child had arrived at the age of fourteen without perhaps ever having seen either of its parents, by force of mere instinct it would necessarily prefer to be with them rather than with the persons with whom it had always lived.³⁵

With this hypothetical, the court sets forth a custody test that applies alike to legal and adoptive parents, casting even the judicial decision to leave a child with a legal parent as based, not on the parent’s legal rights, but on the assessment that removal from the legal parent would constitute “a serious dislocation of an existing tie.”

In deciding that a 15-year-old girl would be better off with the woman who had taken her in and educated her than if returned to her mother, the *Gyngall* court relied on

³² *Stourton v. Stourton*, 44 Eng. Rep. 583, 586, 588 (Ch. 1857). Judges would sometimes interview a child in order to assess how “deep” his or her religious impressions were, noting when they did so that this was not equivalent to allowing the children to choose their parents. See, for example, *Stourton*, and the cases discussed in *Queen v. Gyngall*, 2 Q. B. 232 (1893). Like parenthood, religious belief could not be a matter of the child’s rational choice: In *Talbot v. The Earl of Shrewsbury*, 41 Eng. Rep. 259, 265 (Ch. 1840), the court rejected a lawyer’s proposal that the court require that the child be educated in two religions and allowed to choose between them, finding that “it is quite impossible that a child can be so educated as to keep him so aloof from one faith or the other as to enable him, at the early age of eighteen years and a half, to decide for himself which he will then adopt.”

³³ *Hill v. Hill*, 31 N.S. 505 (V.C. 1862).

³⁴ 2 Q. B. 232 (1893).

³⁵ *Id.*

the child's written narrative of her "recollections as to the history of her past life."³⁶ The court, like its predecessors, noted the differences of wealth and religion between the adoptive and the legal parent, but asserted that its decision was based, not on any assessment of which custodian would provide the child with a better life, but on the child's developmental narrative:

If a child is brought up, as one may say, from its mother's lap in one form of religion, it would not, I should say, be for its happiness and welfare that a stranger should take it away in order to alter its religious views. Again, it cannot be merely because the parent is poor and the person who seeks to have it is rich, that, without regard to any other consideration, to the natural rights and feelings of the parent, or the feelings and views that have been introduced into the heart and mind of the child, the child ought to be taken away from its parent merely because its pecuniary position will thereby be bettered. No wise man would entertain such suggestions as these.³⁷

Although in this case the adoptive parent was well off and the legal parent was not, in the court's view, only the child's "mind" and "heart" tied her to the wealthier caretaker. Drawing on and synthesizing a century of adoption case law, the *Gyngall* court awarded custody to the adoptive parent over the legal parent, on the basis of the "feelings and views that had been introduced into the heart and mind of the child."

B. The Resistance to Adoption Contracts in Victorian Adoption Disputes

When Eliot published *Silas Marner* in 1861, England had not yet legalized adoption, which had long been legal in civil law countries, and was legalized in the United States by a series of state statutes in the 1850s.³⁸ But English courts, as we have seen, were regularly awarding custody to adoptive parents nonetheless, on the basis that legal ties do not bind a parent to a child as firmly as a child's psychological narrative does.

Ironically, the line of cases that produced this judicial devaluation of legally constituted parenthood originated with the attempt by adoptive parents to legally formalize their adoptive relationships. Many custody disputes between legal and adoptive parents appeared in court because adoptive parents believed they had a legally enforceable claim to a child, a claim that derived from a private legal arrangement that purported to transfer parental rights. What surfaces in these cases is that throughout the nineteenth century, people were regularly turning to law to stabilize their relationships with adoptive children, asking their lawyers to draw up wills,³⁹ contracts, and deeds⁴⁰

³⁶ *Id.*

³⁷ *Id.*

³⁸ Grossberg 268-81.

³⁹ Testators making children their adopted heirs often used conditional bequests to the children's parents to secure the parents' promise not to reclaim their children. See, for example, *Colston v. Morris*, 37 Eng. Rep. 849 (Ch. 1820), in which a testator drew up a will making his granddaughter his heir, and committing to his trustees her "guardianship, custody, care, tuition, management, and education" until she should reach the age of twenty-one. This will granted a legacy to the girl's father, making the legacy revocable "if the father or his wife should ever interfere with the management and direction of the trustees respecting the education of his granddaughter . . . as it was his wish that he should not have any controul over her."

that would prevent the original legal parent from later trying to reclaim control over the child,⁴¹ or from blackmailing the adoptive parent with the threat of such interference, as sometimes occurred.⁴²

The eighteenth-century courts that first encountered these legal transfers of parentage spoke of parenthood in contractualized terms: A parent could “consent” to “waive” his “parental rights.”⁴³ By the 1820s, however, judges, when they paid any attention at all to these private legal rearrangements of parenthood, rejected them as invalid, while nonetheless awarding custody to adoptive parents on the basis of the child’s developmental narrative. An adoptive parent who had drawn up a will legally transferring custody to herself had “attempt[ed] to do that which she could not lawfully do.” If the court awarded custody to the adoptive parent, this was because it was too late to wrench the child away from an already-established “course of development,” and not because the adoptive parent had, as she believed, created through legal instrument an enforceable legal right to the child.⁴⁴ The parent’s consent to a legal arrangement did not validate it, because a contract giving up his rights to his children “is not a contract that a father has any legal power to make.”⁴⁵ In cases where a legal and an adoptive father had

⁴⁰ Contracts and deeds (courts used the terms interchangeably) that transferred parental rights began in the nineteenth century to replace legal wills as the most commonly used adoption device. Cases involving adoption contracts include *Hill v. Gomme*, 48 Eng. Rep. 1050 (Ch. 1839), *In re Boreham*, 94 R.R. 857 (Q.B. 1853), and *In re McGrath*, 1 Ch. 143 (1893). These contracts usually secured a promise of noninterference from the legal parent, in exchange for an agreement on the part of the adoptive parent to bring up and care for the child. Some also contained provisions in which the legal parent agreed to pay the adoptive parent as consideration for adopting the child. (In *Hill v. Gomme*, a witness testifies that the solicitor added such a provision only because he was unsure how to make the contract binding.) For a typical example of an adoption contract, see *In re Boreham*, in which a father

did solemnly promise and agree with Smith that he would permit and suffer the said E.S. Boreham [his daughter] to reside and live with the said Smith until she should be grown up and able to provide for herself, and that he would not in any way interfere with the said Smith in the bringing up and education of his daughter, nor remove nor seek to remove her from the care of the said Smith, but would at all times permit her to remain with him as his adopted child; and further, that he would pay to Smith 14s. per month for the support and education of the said E.S. Boreham.

In re Boreham, 94 R.R. at 857.

⁴¹ George Behlmer describes the predicament of adoptive parents who became attached to a child only to be forced to give the child up to legal parents who had changed their minds. Behlmer 285-99. This problem was one of which George Eliot might have been particularly aware. As many have noted, Eliot’s interest in adoption at the time she wrote *Silas Marner* derived in part from her close attachment to the adopted daughter of Charles and Cara Bray. Bodenheimer 189-231. Kathryn Hughes, in her biography of Eliot, writes that the Brays’ successful adoption was preceded by a failed attempt at one, and hypothesizes that perhaps the first adoption did not work out because the child’s “real mother” wanted her back. Kathryn Hughes, *George Eliot: The Last Victorian* (New York: Farrar Straus Giroux, 1998) 61.

⁴² Lawyers for adoptive parents would often intimate that a legal parent who brought a case to court did so only in the hope of financial gain. See, for instance, *Lyons v. Blenkin*, 37 Eng. Rep. 842, 843 (Ch. 1821), in which lawyers argue that the father “is only stimulated to come forward by the hope of procuring some allowance from [his daughters’] estates.” According to Behlmer, in early twentieth-century England, blackmail by a child’s legal parents was a common fear of middle-class parents who adopted children from orphanages and workhouses. Behlmer 299-315.

⁴³ See, for example, *Blake v. Leigh*, 27 Eng. Rep. 207 (Ch. 1756).

⁴⁴ *Lyons v. Blenkin*, 37 Eng. Rep. 842, 846 (Ch. 1821).

⁴⁵ *In re McGrath*, 2 Ch. 496, 508 (1892). Courts made this point even more insistently in cases involving husbands who signed separation deeds giving custodial rights to their wives, refusing to enforce such

executed a contract transferring parental rights and duties, the adopter had no enforceable legal right to the child if the father changed his mind “at a very early period.” However, the court would refuse to allow the father to take the child back if the adoptive parent had “taken the boy home and brought him up” for an amount of time sufficient to “alter[] the condition in life of the boy.”⁴⁶ A parent-child tie could not be created by legal contract. But courts would recognize the bond between parent and child that developed over time.

Lawyers in these cases sometimes argued that enforcing adoption contracts would open up the possibility of downward social mobility. These lawyers presented as a nightmare the very scenario that Eliot presents as fairy tale in *Silas Marner*:

[T]his was a contract contrary to the policy of the law, for thereby a parent was contracting for the relinquishment of his child, the father thus depriving his son of that parental care which by the law of nature he was entitled to, and relieving himself from those moral duties and obligations which a parent owed to his child. If such a contract were held valid, then, where a father in good circumstances contracted to abandon his child to a man of the lowest and meanest estate and condition, the Court might be obliged to enforce the contract.⁴⁷

This specter of a wealthy legal father who loses custody to a poor adoptive father, which had no correlation to actual adoption cases, appeared alongside a judicial concern with the opposite scenario. Judges feared that by awarding custody to adoptive parents who were wealthier than their legal counterparts (as they tended to be), they might open the door to a legal regime in which children could be wrested from their parents at the “wanton” will of any stranger with a superior fortune.⁴⁸ The recurrence of these scenarios connecting adoption contracts to a new fluidity of class suggests that behind the resistance to legal adoption was an anxiety that the increased availability of private lawyering made it disconcertingly easy to rewrite existing social and family structures.

Underlying the nineteenth-century courts’ turn away from formal legal definitions of parenthood was a judicial reluctance to countenance attempts by adoptive parents to restructure parent-child relationships through legal arrangements. The turn from law to the child’s psychological narrative as the basis of parent-child ties allowed courts to award custody to adoptive parents without condoning these legal transfers of parentage. Judges looking back at a child’s developmental history would refrain from uprooting a child from an adoptive parent, but resisted the efforts of adoptive parents to secure this rootedness ahead of time through legal means.

III. THE FANTASY OF ADOPTION WITHOUT LAW

These cases, and their resistance to adoption contracts, suggest that the absence of contract is part of what makes the adoption story of *Silas Marner* such an appealing

contracts on the basis that the father’s “custody and controul of his children [was] thrown upon him by law, not for his gratification, but on account of his duties.” *St. John v. St. John*, 32 Eng. Rep. 1192, 1194 (Ch. 1805).

⁴⁶ *Hill v. Gomme*, 48 Eng. Rep. 1050, 1054-55 (Ch. 1839).

⁴⁷ *Hill v. Gomme*, 48 Eng. Rep. at 1053.

⁴⁸ *Powel v. Cleaver*, 29 Eng. Rep. 274, 274 (Ch. 1789) (“It is no where laid down that the guardianship of a child can be wantonly disposed of by a third person.”).

fantasy. *Silas Marner* is often taken for a pro-adoption novel, but Eliot's representation of adoption resists the legal formalization of adoptive ties sought by actual adoptive parents. Appearing at a time when judges awarded custody to adoptive parents but strove to repress the contractual foundation of adoptive relationships, the story of Silas and Eppie presents an idealized version of adoption without law.

Silas's adoption of Eppie is framed as antithetical to a legal adoption.⁴⁹ Silas does not make a conscious decision to adopt Eppie; in fact, he is in an unconscious trance when she first enters his home:

[H]e was arrested . . . by the invisible wand of catalepsy, and stood like a graven image, with wide but sightless eyes, holding open his door, powerless to resist either the good or evil that might enter there. (167)

At this moment of a "chasm in his consciousness" (167) during which he holds open his door and Eppie crawls to his hearth, Silas is the polar opposite of a rational legal actor. The rational choice embodied by legal contract is similarly absent from Silas's subsequent decision to adopt the child who mysteriously appeared on his hearth. For the initiating impulse behind the adoptive bond we are referred not to the parental intent of a rational adult but to an irrational impulse derived from the parent's own childhood memories. Silas acts out of delusion when he first reaches out to touch the sleeping child, mistaking her golden curls for his hoard of gold. Delusion is replaced by the "unconscious" (168) bonding that occurs when, upon touching Eppie, Silas is reminded of his childhood. When, a short time later, Silas voices his decision to keep Eppie—"I can't part with it, I can't let it go"—we are told that he is driven by "impulse" rather than by rational thought:

[H]is speech, uttered under a strong sudden impulse, was almost like a revelation to himself: a minute before, he had no distinct intention about the child. (172)

Silas's decision to adopt Eppie is no more an exercise of rational choice than is Eppie's decision, sixteen years later, that Silas is her father. In both cases, the "choice" is a ratification of past events that predetermine it by forming the mind of the actor who exercises that choice.

Godfrey's wife, Nancy, affirms that Eppie's adoption story is a fantasy that elides the elements of adoption that elicited cultural discomfort. Before she learned of Godfrey's paternity, Nancy had refused to adopt Eppie, on the basis that "to adopt a child . . . was to try and choose your lot in spite of Providence" (216). As Nancy observes, Silas's adoption seems more palatable than an ordinary adoption because Silas did not choose it at the outset: "he didn't go to seek her, as we should be doing" (217).

The alegal purity of the Eppie-Silas relationship is brought out by its opposition to the exaggeratedly legal relationship between Eppie and Godfrey. Godfrey's legal ties to Eppie are manifold, encapsulating the entire panoply of legal links between parent and

⁴⁹ As Rosemarie Bodenheimer observes, an "erasure of choice" contributes to the fairy-tale appeal of Silas's adoption of Eppie: "For the most part the Silas-Eppie story is a fairy tale of substitute parenthood which derives its appeal from its understanding of impossible wishes. The transfer of Eppie from her mother to her new forty-year-old father is performed when both adults are unconscious; it is naturalized by the erasure of choice." Bodenheimer 206.

child that Eliot represents: the marriage contract, the law of primogeniture, and the legal will. Godfrey purports to have a legal claim to Eppie because he was legally married to Eppie's mother. Godfrey's notion that inheriting his property is Eppie's "birthright" derives from the law of primogeniture. And Godfrey, after failing to convince Eppie to leave her adoptive parent, decides not to publicly disclose the fact of his fatherhood for the time being, but considers writing it into his will: "I shall put it in my will—I think I shall put it in my will" (236). Should Godfrey go through with his intention to write a will naming Eppie as his daughter, he would be using a legal instrument to, in effect, adopt his own legal child.

It is not Godfrey, however, but the two villains of *Silas Marner* who most emphasize and valorize the absence of law in the adoptive relationship between Silas and Eppie. These villains—Dunstan Cass, Godfrey's brother, and William Dane, who is like a brother to Silas—use law to help carry out their schemes. In contrast to the passive Silas, who accepts what God sends, and the irresolute Godfrey, who means well but acts badly, Dunstan has a "diabolical cunning" (80). He manipulates the marriage contract and the legal will to swindle money out of his brother, trapping Godfrey into his legal marriage to his first wife, then blackmailing Godfrey with the threat that he will reveal the marriage to their father and thus "get you turned out of house and home and cut off with a shilling" (75). Dunstan only hopes to take advantage of a new legal regime to "slip into [the] place" (75) of his brother; William Dane actually succeeds in doing so.⁵⁰ Jealous when Silas becomes engaged to be married, Dane "w[eaves] a plot" (61) that frames Silas for theft, presumably manipulates the legal process of Lantern Yard to find Silas guilty, and, when Silas's fiancée then breaks off her engagement, marries her himself.

The juxtaposition of these rational (il)legal actors with Silas's unintended adoption of Eppie is emphasized by the pattern of unconscious moments that mark the turning points of Silas's life. The first two turning points occur when the villains "plot" against an unconscious Silas; the only rational actor at work arranging the chain of coincidences that creates the third, happier adoption plot is Eliot, the author.⁵¹ The opposition of the plotting Dunstan and Dane and the plotted-upon Silas suggests that behind the resistance to legal adoption is a larger anxiety about the rise of a legal culture that provides a dangerous and disruptive tool to those who want an easy means to rebel against their given lot. It is in the hands of the self-interested and autonomous legal actor—figured not as the parent or the child but as the jealous brother—that law becomes a threat to the status quo. The words Nancy uses to describe adoption apply perfectly to the actions of these villainous brothers: both "willfully and rebelliously [seek]" what "was not meant to be" (217). Significantly, the villainous William Dane was initially named William "Waif,"⁵² which, in conjunction with Nancy's language, suggests that the

⁵⁰ Dane thus takes advantage of living in a community in which "the poorest layman has the chance of distinguishing himself by gifts of speech" (56). Eliot presents this community, the dissenting religious sect of Lantern Yard, as manifesting the northern, urban forces of "industrial energy and Puritan earnestness" (71) that make social mobility and change dangerously easy, and sets the story of *Silas Marner* in a remote, old-fashioned town that, in 1800, is just beginning to be invaded by these forces of change.

⁵¹ Silas is in a trance when Eppie comes to him and when William Dane frames him for theft, and it is because an errand "slipped his memory" (91) that Silas leaves his hut unlocked, enabling Dunstan to steal his gold.

⁵² See George Eliot, *Silas Marner*, ed. Q.D. Leavis (1967; London: Penguin, 1985) 251 n.9.

resistance to legal adoption was driven, in part, by a fear of the rational adult foundling who uses law to invade and dismantle existing social structures.

The adoption story of *Silas Marner* is consistent with George Eliot's pervasive resistance to law—in particular, her resistance to attempting to shape the future through legal tools such as contracts and wills. Throughout her novels, Eliot condemns private lawyering, presenting it as a pernicious attempt to restructure the status quo. *Middlemarch* (1872), for example, is riddled with father-figures who use legal wills to disrupt the lives of the next generation.⁵³ Eliot's representation in *Felix Holt* (1866) of the lawyer Jermyn encapsulates her attitude toward private law, collapsing into one “upstart”⁵⁴ lawyer—who brings industrialization to the countryside, fathers an illegitimate child into the local aristocratic family, and is first described as literally chipping away at this family's decaying estate⁵⁵—the destabilizing forces of modernity.⁵⁶

If law disrupts and narrative restores, in the adoption story of *Silas Marner*, this restoration is only apparent after the fact. By waiting until Eppie reaches eighteen—near enough to adulthood to have accepted an offer of marriage—to put the question of who her father is, the novel avoids directly confronting the more ambiguous situation in which legal clarity might help draw the line between Eppie's two potential fathers.⁵⁷ In *Silas Marner*, as in her other novels, Eliot presents legal tools that disrupt parent-child relations but does not consider the possibility of a contract—such as an adoption contract—that secures in advance the rootedness, security, and preservation of continuity that Eliot values.

IV. CONCLUSION

What are we to make of the resistance to law in Eliot's story of adoption, and how might it inform our understanding of the rejection of adoption contracts by Victorian courts? It seems significant that both *Silas Marner* and Victorian courts embraced a narrative approach to custody that reached the same result adoption contracts hoped to

⁵³ These wills are harmful because they disrupt the status quo: Edward Casaubon is condemned for writing a will that withholds from Dorothea Brooke her rightful inheritance as his wife; Will Ladislaw is disinherited, an injustice remedied at the end of the novel by the use of a will to restore his property to its rightful owner; and the willful Peter Featherstone nearly ruins Fred Vincy's life with the prospect of “expectations” that will elevate him to a higher social station.

⁵⁴ George Eliot, *Felix Holt* (1866; London: Penguin, 1995) 33.

⁵⁵ “Lawyer Jermyn had had *his* picking out of the estate. Not a door in his big house but what was the finest polished oak, all got off the Transome estate” (9).

⁵⁶ Commentators do not distinguish between Eliot's attitude toward traditional law and her attitude toward modern, contractual law, and thus do not see in her representation of the private lawyer a resistance to the radical potential of contract. Many, however, have commented on Eliot's resistance to *political* radicalism, and her argument, especially in *Felix Holt* and *Middlemarch*, that slow, organic change is preferable to a revolution that follows, as Semmel puts it, a “doctrinaire blueprint” for rapid change. Semmel 102; see also, for instance, Beer, *George Eliot* 133-46.

⁵⁷ Throughout Eppie's childhood, Silas worries that the child who suddenly arrived on his hearth might be taken from him just as suddenly. He has just voiced to Eppie his fear of losing her when Godfrey arrives to make his claim. It is not until Godfrey attempts, and fails, to reclaim Eppie on the basis of his legal tie to her that Silas has a secure tie to Eppie, and she to him. Only then can Eppie securely settle her story by marrying, and can Silas, “now she says she'll never leave me” (241), finally return to Dolly to complete his story.

achieve—protecting ties between children and adoptive parents—even while rejecting contractual claims to custody. But how so?

In assessing this connection, it is helpful to consider what Eliot's story of adoption tells us about the choice—or lack thereof—of the child whose future is at stake in these determinations. Just as Silas adopts Eppie without exercising rational choice, the rational choice of the freely contracting legal actor is similarly absent from Eppie's decision, at age eighteen, to identify as Silas's daughter. It is true that Eppie—unlike most children involved in custody disputes—is left free to make this decision. One critic has interpreted Eppie's decision to affiliate with Silas as an act of “freedom” that rejects ascription of identity by birth and thus exhibits a “modern, individualistic ethos.” In this reading, Eppie's choice of father is emblematic of the shift from Status to Contract.⁵⁸

But Eppie's decision is not a choice in any meaningful sense. This lack of choice, in turn, belies the possibility of any meaningful shift from a world dictated by status to one created through free contractual choice. To begin with, what Eppie “chooses” here is the father who defines her identity. In affiliating with an adoptive father, she may be reconfiguring the definition of parentage, replacing “birth” with a more nurture-based approach. But Eppie still defines herself in terms of her status as this parent's child. More importantly, *Silas Marner* presents Eppie's determination that her father is Silas as no choice at all. We are told not only that Eppie here is driven by “feelings” and not by “thoughts” (232), but also that she “can't turn my mind” to thinking of any father but Silas, or any identity other than the one she has been raised in (234). Eppie's decision to stay with Silas is determined by past events that Eppie had no control over, and that have shaped her understanding of who her father is and who she herself is.

Eppie's lack of meaningful choice here brings out a truth that applies, not just to the specialized realm of adoptive relationships, but to every child, and every adult. *Silas Marner*, and more broadly, the novels of displaced children that were so popular during the Victorian age, convey a lesson that applies to intact families as well. This same lesson is conveyed by Victorian adoption case law, with its analysis of when, precisely, it is “too late” for a child's development to change course, and of the role of early experience and upbringing in determining a child's future social station, manners, attachments, and even religious beliefs. This is that every individual, upon reaching adulthood, has been formed at the hands of parents that she did not, and could not, choose.

Judges in child custody disputes awarded custody to adoptive parents on the basis of a judicial reading of the child's life, but resisted the attempts of adoptive parents to use legal tools to construct a parent-child tie at the outset of the adoptive relationship. In so

⁵⁸ Semmel 6, 26. In Semmel's view, Eppie's choice is an act of “freedom” that exemplifies the “modern ethos” by

rejecting the traditional code of blood in favor of a modern one of deed. She turns aside Godfrey's natural claim to her by virtue of birth in favor of Marner's earned merit as a loving father. . . . To employ the language of present-day social theorists, the modern criterion of “achievement” has overwhelmed the unearned feudal “ascription” of birth.

Semmel 24-25. While I agree that *Silas Marner* displays a contradictory attitude toward modernity, I believe that this contradiction derives, not, as Semmel sees it, from a juxtaposition between the modern Eppie and the traditional Silas, but from the fact that parental “ascription” is refigured as choice. Even if, as Semmel argues, Eppie's choice of father exhibits a modern preference for merit over ascription, the merit and ascription at issue are not Eppie's, but those of her parent. Semmel describes Eppie's choice as the “rebellious” act of a “self-directed being.” Semmel 6. But what Eppie chooses is the father who has already determined her own identity.

doing, these judges started the process of cordoning off family law as a specialized realm in which the ordinary law of contracts, and of other legal fields, does not apply. The usual justification for family law exceptionalism is that the realm of the family must be protected from the destabilizing and dehumanizing taint of contract law, and of commercial transactions more generally. The reading of *Silas Marner* alongside Victorian adoption case law suggests another possibility, one that reverses the protective mechanism at work: namely, that cabining off family law as an exceptional realm served to shield contract law from the uncomfortable truths contained within the realm of family relations.⁵⁹ The insistent opposition between family and contract—as well as the related opposition between literature and law (as constructed in *Silas Marner*, for instance, by the recurring opposition between storytelling and law)—shielded Victorian contract law, and, more generally, the related Victorian ideologies of freedom of contract and of laissez-faire individualism, from the disruptive truth that becomes visible in Victorian discussions of the family: the role of parents in forming the child's adult self.

Silas Marner provides a means of assessing who Eppie's father is, and thus who she is, after the fact—it teaches us to read her life.⁶⁰ In the narrative mode of understanding self that Eliot presents in *Silas Marner*, the writing of self is subsumed to the reading of self. To tell their stories about who they are, Eppie and Silas look back at the past and weave it into their ongoing present. Through a story of adoption in which narrative, not law, is the “glue” that binds parent to child, *Silas Marner* recasts the radical promise of a newly contractual regime into a world in which the present continues to be determined by an unchosen, unintended past.

⁵⁹ Halley makes the related point that our construction of family law as an exceptional field, along with the doctrinal separation of family law from fields such as poverty and welfare law, “obscures the state's constant, conscious use of the family as a private welfare system.” Halley 290.

⁶⁰ Gillian Beer connects “the insistent search for parentage in Victorian fiction” to the rise of the Victorian detective narrative, and sees both as arising out of a Victorian anxiety over the loss of a single recoverable origin, a loss that resulted from Darwin's presentation of the human past as “unrecoverable by human memory.” Both the detective story and the search for parentage, Beer argues, respond to this anxiety by figuring origins as “recoverable by means of astute reading.” Gillian Beer, “Origins and Oblivion in Victorian Narrative,” in *Arguing with the Past* (London: Routledge, 1989) 23-24.

Eppie's story is not a mystery; the reader knows from her start who her parent is. But this story is like the detective narratives Beer describes in that it presents identity as a text to be read. This emphasis on reading quells anxiety not only by making the past seem recoverable, but by deflecting attention away from writing, in particular, from the writing of the world through private law, which in the Victorian era was presented as more capable than ever of reshaping the present, and the future.