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### Trollope and the law

To talk of Anthony Trollope and the law might be to invoke the obvious. Like many of his Victorian counterparts, but even more so, his novels are famously (and infamously) populated with legal actors: solicitors, barristers, judges, and jurors, with the odd criminal and breacher of contract thrown in for good measure. The law also provides the novels with well-wrought plot lines, often involving social and communal regulation of property, and in particular, landed property and questions of inheritance. In addition, Trollope, whose novels exalt truthfulness, honor, and honesty, frequently mined the crimes of forgery and perjury for his plots and for the moral edification he sought to bestow on his readers. All of these have made him a perennial favorite in law-and-literature scholarship from the days of his contemporary reviewers (who so reveled in pointing out his legal errors, especially in *Orley Farm*, that he famously sought legal counsel for *The Eustace Diamonds*) to the present. It is perhaps a testament to Trollope's attempts at verisimilitude and his vivid realism that some of his novels have been treated as real-life legal cases, analyzed by lawyers and legal scholars for their insight into their legal questions.

Trollope's novels are also renowned for their social observation and their precise portrayal of interpersonal and group interactions. Arguably, no other Victorian author or critic was as aware of the community's ability to make meaning or portrayed these intricate processes as skillfully. But his texts are more than entertaining novels of manners and social mores; the social interactions portray a mode of communal self-regulation and a subtle if rigorous determination of norms. Combining the two commonplaces about Trollope's novels – that they are obsessed with the law and with the social power of a community – I argue that Trollope draws on the law not only to introduce moral themes and plots into his novels but also to show how the two obsessions are one and the same. The novels show that the jurisprudential upheavals and the legal reforms that characterized the British nineteenth-century were in fact part of the ongoing cultural and

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social crisis facing Englishness itself. Reading Trollope in this way helps us understand the law as part of a larger turmoil in English culture.

Law and literature are two important ways by which people make sense of their lives and their changing national and/or communal culture. No one, it seems, understood that better than Trollope, who turned to the law both thematically and structurally. As R. D. McMaster has argued, law structures Trollope's understanding of English life: "The law is a sort of skeleton, underlying it, giving it shape, allowing for possibilities of action and setting limitations."<sup>1</sup> In other words, not only are the novels filled with legal events and actors, they also engage in Victorian legal culture even when there is no lawyer or forged document, disputed codicil, or question of entailment in the vicinity. As I show below, the novels engage with the law in the epistemological questions they raise, in their understanding of history and tradition, and above all in their obsession with understanding what it means, exactly, to be English.

**"An English barrister and an English gentleman"**

A closer look at Trollope's legal actors, events, and issues reveals that questions of Englishness and questions of law are inextricable, and that what appear as struggles over legal doctrine, ideology, or character, are in fact questions about the commonality which they serve and regulate. The plot of *Orley Farm*, the most discussed of Trollope's "legal" novels, revolves around the legal issues of inheritance, landed property, primogeniture, and forgery. But the novel has more than all these at its center. At one point, many of its legal actors travel to an international congress on law reform in Birmingham, where, as Kieran Dolin has noted, "the central issue is whether lawyers should be primarily concerned with finding the truth or with promoting the interests of their clients." But that which Dolin sees as a "discourse on the law as it should or should not be," where "'law' becomes a metaphor and metonym for society's normative project" also betrays an anxiety over what constitutes Englishness.<sup>2</sup> The two are not metaphors or metonyms for each other. Rather than reflecting each other, law and the culture of which it is part are mutually constitutive.

Indeed, questions about English commonality are often elaborated through lawyers and legal issues. One of the scenes in which questions of Englishness and the law are brought together most revealingly is the meeting between Lady Mason's lawyers in *Orley Farm*. Mr. Furnival, her solicitor, seeks the help of the Old Bailey barrister, Mr. Chaffenbrass, in assessing the case. In the exchange, Furnival describes Lady Mason's social status, affiliations, and connections: "She has done her duty admirably since her

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husband's death. You will find too that she has the sympathies of the best people in her neighbourhood. She is staying now at the house of Sir Peregrine Orme, who would do anything for her" (*OF* ch. 35). As Mr. Furnival sees it, Lady Mason's case hinges only on the quality and quantity of her affiliations. Even doing "her duty" does not entail answering to a higher authority, but rather doing what is expected by the community; instead of a specific, immutable set of behaviors, it is a performance of commonality.

Furnival continues to invoke her connections, "And the Staveleys know her. The judge is convinced of her innocence." Chaffanbrass, the vulgar ("dirty") yet brilliant barrister tries to make the separation between law and communal standing: "His conviction expressed from the bench would be more useful to her. You can make Staveley believe everything in a drawing-room or over a glass of wine; but I'll be hanged if I ever get him to believe anything when he's on the bench'" (*OF* ch. 35).

Trollope here shows the full complexity of legal culture. Chaffanbrass insists that *who* Lady Mason is and who her friends are are immaterial and that only what can be *proved* against her counts in the law. But he is also described as a "dirty little man"; his very neutrality or impartiality is presented as opportunistic, even mercenary. At the same time, Mr. Furnival, who by this point is defending a woman whom he strongly suspects of criminal acts, is presented as an honorable Englishman. When Chaffanbrass suggests Solomon Aram as attorney for Lady Mason's defense, Furnival is aghast, "Isn't he a Jew?" Chaffanbrass's response reflects his lack of regard for social standing or other communal affiliations and his singular concern for what is posited by the law: "Upon my word I don't know. He's an attorney, and that's enough for me" (*OF* ch. 35).

### Victorian jurisprudence: natural, common, and positive law

The lawyers Chaffanbras and Furnival of *Orley Farm* are acting out one of the central jurisprudential debates of the nineteenth century, that between "natural law" and its immutable values of right and wrong as represented by William Blackstone's *Commentaries on the Laws of England* and the more relative approach in the skeptical tradition of Hume and his followers, Bentham, Mill, and Austin, proponents of "positive law." Natural law regards the law as a manifestation of universal principles of abstract justice, while positive law severs the essential connection between ethics or justice and the law; a law is a valid law if posited, in the proper manner, by a recognized authority, regardless of its moral implications.

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Thus, one can read the discussion between Furnival and Chaffanbrass as underscoring the historical shift from law based on a known community and communal values to one based on impartiality. In the former, as exemplified by Furnival's pleas that Lady Mason should be judged by her character and social status, "the judgment of a person must be according to the laws or customs of that person's community; such judgment must be by those with knowledge of those customs or – what amounts to the same thing – by those who share in those customs and belong to the same community."<sup>3</sup> With the advent of positive law in the nineteenth century, the link between that claimant and the jurors became that of impartiality, as advocated by Chaffanbrass above. This creates a strange inversion: "Where once all were insiders of communities who knew their own law, all are now observers of a world that posits truth of fact."<sup>4</sup>

The tension between natural law, which puts a premium on content (whether the law is just or moral), and positive law, which values procedure (whether the law has been posited correctly), was mediated through the changing role of the *common law* in the late Victorian period. The "common law" is the unwritten law which is generally derived from cases decided by courts, and not from the express authority posited by a statute.<sup>5</sup> Its authority derives from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs and particularly the ancient unwritten law of England. In general it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. While the common law (unlike natural or positive law) is a legal system rather than a school of jurisprudence, it is vital to understanding the legal culture of Victorian England. Because its authority is diffuse and stems from custom and tradition, it tends to consolidate its power by inclusion and accommodation of conflicting elements *over time*. The inherent flexibility of the common law – permitting continuity with change – had been regarded as a strength of the English legal system.

But social, economic, political, and jurisprudential changes in the late eighteenth century, and throughout the nineteenth, created a steady erosion of the prestige and authority of the common law. The exigencies of empire, of a rapidly expanding legal system, and of an ever-growing number of participants in the legal process, presented a major challenge to the common law. Once limited in scope, more or less known by its practitioners, it reached dimensions far too large to be comprehended or known by a single individual. The growing numbers and kinds of participants in the legal system challenged the very *commonality* of the common law, expanding its membership and purview. Partly in response these challenges,

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proponents of positive law advocated the ascendancy of statute law and legislative codification over judge-made law. Common law, they argued, seemed less able to contend with a growing and increasingly heterogeneous population with increasingly complex legal needs.

And indeed, discussions of legal and political reform in the British nineteenth century are usually anchored in a series of well-known parliamentary acts and not in the courts. The First Reform Bill (1832), the Second (1867), and the Third (1884); the Corn Laws (1815) and their repeal (1846); the Factory Acts (1801, 1819, 1831, 1833) and the Married Women's Property Act (1882) are all invoked, among others, as the cornerstones of nineteenth-century legal transformation. Whether Victorian reform is seen a story of failure or success, (or, increasingly, neither or both) parliamentary legislation is considered the backbone of the history of Whig reform.

Moreover, the process of reform through legislature has come to signify a turning point not only in English political history but also in its legal history and doctrine. Legal historians trace a shift in the primary mode of law-making: from judge-made common law to the legislative "reform" advocated by the proponents of positive law, most notably Jeremy Bentham and John Austin. As legal historian David Lieberman argues, "For later reformers and historians of English law, the first decades of the nineteenth century seemed to mark an important break in legal development, the opening chapter of an extended process of Victorian law reform through the vehicle of legislative enactment."<sup>6</sup> In other words, reliance on statutory reforms is perceived as a departure from the centrality of judge-made common law and the beginning of a new post-enlightenment focus on positive law and parliamentary codification.

The two sources of law were seen as not only separate but also competing: legislative success could undermine the authority of the common law. Judge-made common law was increasingly required to defend and fortify its position and authority as the primary source of British law. However, Lieberman shows how this perceived rivalry between statute law and common law was largely artificial. He not only problematizes the common law/codification binary, but shows how the reforms of the nineteenth century (many of them regarded as failures) can be viewed in terms of their continuities with earlier orthodoxies.

This problematization of the common law/positive law opposition emerges from a close reading of Trollope's novels, which also engage in the debates over what should be the dominant modes of legal formation in Victorian Britain. In the rivalry between judge-made common law, which had dominated English legal culture for hundreds of years, and the more recent positive law, which was thought to have replaced it, Trollope shows

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just how powerful and influential the common law culture and its communal modes of meaning-making still was.

With this in mind, we return to the two lawyers from *Orley Farm*. Notably, the novel does not take a stand for any side, common law, natural law, or positive law. The scene between Chaffanbrass and Furnival, like the novel as a whole, only complicates the problem. Justice (natural law) is aligned with the dirty Chaffanbrass and with positive law, whereas communal sentiment, Englishness, and time immemorial are aligned with the honorable Furnival and injustice. Moreover, the narrator and – by virtue of his narration – the readers are sympathetic to the side of injustice. This misalignment of honor and justice on the one hand, and the revulsion at positive law’s apparent mercenary ideology on the other, leave the narrator and readers with no mooring for judgment, a confusion which is compounded by the strong and morally unambiguous tone of the narrator. Natural law values, which were considered universally just, are shown to have changed. A closer look reveals that the changes are not due to an external force or decision, but happen because the once-fixed community is rapidly changing, and its values follow. Natural law values are thus exposed as communal and variable, rather than universal and immutable.

The unbearable state of affairs by which the honorable lie and the guilty are acquitted is astounding to the narrator:

And more than this, stranger than this, worse than this, – when the legal world knew – as the legal world soon did know – that all this had been so, the legal world found no fault with Mr. Furnival conceiving that he had done his duty by his client in a manner becoming an English barrister and an English gentleman. (OF ch. 72)

Note that his astonishment is less at the disparity between what the law is and what the law ought to be than at the fact that the “legal world” sees Furnival’s behavior as proper and, even more so, properly English, a manner becoming an English barrister and an English gentleman. The narrator is not at odds with what is considered good law or justice, but with what it means to be an Englishman. The two – good law and Englishness – are equated.

Similarly, in his autobiography, Trollope expresses his unfashionable belief in the superiority inherent in the English gentleman (once again exemplified by a judge, underscoring the legal/communal connection.) But in expressing the immutable value he ascribes to the gentleman he is at loss to describe what a gentleman is, and resorts to the implied communal understanding: A man who publicly claims exclusive rights (and commissions) to being a gentlemen, writes Trollope, “would be defied to define the

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term [gentleman],– and would fail should he attempt to do so. But he would know what he meant, and so very probably would they who defied him” (A ch. 3).

### The Greshams of Greshamsbury

Matters of inheritance and landed property in Trollope show most forcefully just how much the communal is ever present even in positive law and in legislative reform. Consider the opening chapter of *Doctor Thorne*, “The Greshams of Greshamsbury,” whose title emphasizes the inseparability of the Englishman and his landed property. The title foreshadows one of the main plot lines, one of Trollope’s favorites: because of the family’s dwindling financial resources, the land must be sold unless the eldest son, Frank Gresham, forsakes love to marry money. The narrator presents this expectation as inherent in English custom and law: “It has become an institution, like primogeniture, and is almost as serviceable for maintaining the proper order of things. Rank squanders money; trade makes it; – and then trade purchases rank by re-guilding its splendour” (WWLN ch. 57). The chapter title not only describes the current state of affairs – the Greshams live on their hereditary land – but also implies – if not without a healthy dose of irony – that things are in their proper place and under rightful ownership. Moreover, the title evokes temporal continuity: the Greshams not only own their land and live on it, they are *of* their land. Unlike “Baker of Mill Hill” or “Bateson of Annesgrove” whose estates’ names imply former ownership, the Greshams are intrinsic to Greshamsbury and it to them (DT ch. 1). Family and land name – *entitle* – each other and this connection is seemingly timeless, existing, much as the common law has, since time immemorial.

The Trollopien narrator is explicit about the Englishness inherent in entitlement through *longue durée*. Speaking of the Gresham motto “Gardez Gresham” and its uncertain origin or meaning, he waxes eloquent about its symbolic value:

But the old symbols remained, and may such symbols long remain among us; they are still lovely and fit to be loved. They tell us of the true and manly feelings of other times; and to him who can read aright, they explain more fully, more truly than any history can do, how Englishmen have become what they are. (DT ch. 1)

In other words, while the quotation implies ironic criticism of this value, it nevertheless provides an important observation: the Gresham motto is still powerful not *in spite of* its uncertain meaning and origin but *because of* them. The passage of time might have dulled the original meaning, but it has

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also consolidated the motto's strength and power as a symbol, and an English one at that. Note that the narrator does not advocate a return to times of yore, when the Greshams ruled through fear or violence. Rather, he suggests that the power of the symbol derives from its sedimentation *over time* and its wide recognition by a community. Even though the community no longer remembers its origin, it recognizes the motto as a symbol, and in so doing recognizes itself as a community. The residues of power – like them or not – still carry authority, even if the authority is communal and historic rather than stemming from existing physical and political power. Denying the symbolic power, the narrator tells us, is tantamount to denying the history of “how Englishmen have become what they are,” leading to a gross misunderstanding of what it means to be English. This carries direct legal consequence and meaning: since the common-law relies on custom and on the passage of time to create its rules and consolidate its power, its symbolic aspect becomes authoritative.

Despite its erosion by the legislative reforms of the nineteenth-century, the legal power inherent in land continued to have a strong hold over the English communal imagination. This hold, as Trollope shows, was not frivolous, or a simple nostalgia, but had real legal meaning. Because of common law's dependence on custom and the cumulative power of “time immemorial” the communal imagination was just as much a part of the legal culture *and of the law* of late Victorian England, as the legislative reforms which have made it famous. Landed property became a major site for the battle between older forms of ownership based on natural law, communal status and custom, and newer positive ones which gave greater freedom of contract and exercise of free will (see my discussion of Roger Carbury below). Moreover, these wars were culture wars just as much as they were property ones. The two – English communal culture and English law – exist inextricably, even when positive law sought to transcend this link.

### Who “We” Are

Lawyers and landed property are obvious manifestations of a society's legal culture. But another of the important ways in which Trollope's work testifies to the persistency of commonality in the legal culture of late Victorian England is less obviously related to the law: his reliance on and his understanding of the elusive yet mighty power of “everyone.” His novels perform repeated inquiries into the power of communal meaning, that which is taken for granted and naturalized by a common understanding or “common sense.” Nowhere is this more prominent than in his 1875, *The Way We Live*



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*Now* where “everybody” seems to be the main actor, motivator, and object of almost every aspect of the novel. In fact, the novel seems preoccupied with one central question, namely, “Who are ‘we’, when we live in this way?” Georgiana Longstaffe, on the verge of being cast out from the “set” to which she has belonged by virtue of her family’s name, her money, and her value on the marriage market (the latter two rapidly diminishing), appeals anxiously to her friend Lady Julia Monogram, pleading to know why she has been “cut.” Lady Monogram replies,

Of course I shall be delighted to see you. I don’t know what you mean by cutting. I never cut anybody. We happen to have got into different sets, but that is not my fault. Sir Damask wouldn’t let me call on the Melmottes [with whom Georgiana has been staying]. I can’t help that. You wouldn’t have me go where he tells me not. I don’t know anything about them myself except that I did go to their ball. But everybody knows that’s different. (WWLN ch. 32)

Lady Monogram, busy drawing social boundaries and rules, uses “everybody” as the rule of inclusion and exclusion. And indeed “everyone” or, as we might say today, everyone who is anyone, does go to Melmotte’s party but does not call on him at home. In so doing Lady Monogram and her set not only act like everyone else, but affirm and confirm their place in the realm of “everybody.” Of course, not everybody (in the world or even in the novel) is invited to Melmotte’s party, and not everybody goes to it (Roger Carbury, for instance). Moreover, some people do call on him at home. Ironically, “everybody” does not denote inclusion but rather exclusion. Moreover, this exclusive group, defined not by external characteristics but by a certain performative vicious cycle (you are part of everyone if you do what everybody does) is inherently unstable. The rule of inclusion is not posited, or even articulated, but rather always already known and widely accepted. Georgiana Longstaffe’s exclusion is yet another way for the community to reinforce its communal identity.

Similarly, later in the novel, London society is trying to decide whether the proper thing to do would be to go to Melmotte’s dinner:

It does sometime occur in life that an unambitious man, who is no degree given to enterprises, who would fain be safe, is driven by the cruelty of circumstances into a position in which he must choose a side, and in which, though he has no certain guide as to which side he should choose, he is aware that he will be disgraced if he should take the wrong side . . . The great thing was to ascertain whether the others were going. (WWLN ch. 59)

Note that right and wrong here are used to describe not an action but a side. In other words, right and wrong are not absolute values (associated

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with natural law) or even formal or structural (one must follow a certain rule, because it is the rule) but rather a shifting allegiance. The men and women are not concerned with whether or not Melmotte is guilty of criminal acts, or even with how much money he really has. Their concern is how many others are going to be at the party. The right thing to do becomes a numbers game, (“If a hundred or more out of the two hundred were to be absent how dreadful would be the position of those who were present!” [WWLN ch. 59]) another speculation in the game of smoke and mirrors played by Melmotte.

The lament is clear if implicit: whereas “everybody” used to be a known, stable if exclusive group, defined by class, status, and wealth, Lady Monogram’s “everybody” is just another speculation, on par with Melmotte’s financial gambles and every bit as dubious. Lady Monogram’s letter to Georgiana Longstaffe betrays her own social insecurity, her insistence that the exclusions she is carving out are, in her very words, in fact self-evident.

The reader, like the characters, eventually discovers that Melmotte has in fact forged the title deeds to his securities. However, forgery in *The Way We Live Now*, unlike that in *Orley Farm*, is not a question of character, or of moral failure. That Melmotte’s character is bad – or “wrong” – is never in doubt by “everyone,” from Roger Carbury to Dolly Longstaffe, from narrator to reader. But the question raised by the legal plot of this novel is not if he is immoral, or if he is guilty, or even if he can pull it off. The only question asked by the characters is “how does his behavior affect me?” Will I ultimately be aligned with the winning side or the losing one? Melmotte, too, understands that the facts relevant to his case are not whether or not he forged the documents but what public opinion will be: “It isn’t what I’ve lost that will crush me, but what men will say that I’ve lost” (WWLN ch. 81). In a society which no longer shares common values, commonality itself becomes superficial and cannot be the basis of law. At the same time, since the question of Melmotte’s guilt is immaterial – or rather, material only to the extent that it might make his supporters look bad – this passage also laments the ability of empiricism and positive law to replace the communal in any meaningful way.

In many of his novels, but most forcefully in *The Way We Live Now*, Trollope portrays a society that has lost its moral moorings and, with them, its social anchors. Like the capitalist speculation led by Melmotte, right and wrong are determined only in hindsight, by success or failure, which in turn depend on the quality and especially the quantity of people who adopt a certain view. It doesn’t help that the same people – “everybody” – are at the same time trying to figure out what “everybody” thinks. In terms of the legal cultural debates laid out above, it initially appears that the (in)famously “conservative” Trollope is yearning for a lost natural law past – with

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immutable and universal values. Unlike the speculative, unstable, and valueless present – which, as its manifestation in positive law, prizes form over content – the past, here as in much of Trollope’s more nostalgic prose, appears solid. But a closer look at one of his most conservative – and worthy – characters reveals a more complicated approach to natural law, and to the past.

Arguably, the most distinct representative of natural law in Trollope’s novels is Roger Carbury of *The Way We Live Now*. Carbury’s legal conservativeness is most prominently manifested in his severe adherence to the law of primogeniture: being bound to leave his estate to “a Carbury,” even when this Carbury is his despicable and completely undeserving nephew, Sir Felix. The irony is that by law his ability to bequeath the land is “in no degree fettered.” Nonetheless, Carbury describes this decision to adhere to the laws of natural descent in terms of restriction and external control: he feels himself “constrained, almost by divine law to see his land went by natural descent” (*WWLN* ch. 14). Carbury, almost masochistically, rejects the law – which allows him to bequeath his land freely – in favor of a higher authority, the coils of duty and custom, a long-standing implied commitment to the rest of his community, and to his place in that community.

The narrator presents this decision as admirable but also misguided. If Sir Felix does inherit the family property, not only would this be an unjust result (Sir Felix is one of the most despicable of Trollope’s cads) but would also wrong the same customs and values Roger Carbury sacrifices himself to uphold. No one doubts that Sir Felix would lose the land soon after inheriting it (if not before) through his indolence, gambling, and general depravity. Ultimately, Roger Carbury decides to relinquish the custom of natural descent and leave the land to Sir Felix’s deserving sister Hetta and her husband, Paul Montague. Interestingly, this decision is once again presented as a constraint; Roger Carbury needs to feel compelled to do so. “In such case Carbury *must be* the home of the married couple.” He decides that “he *must* throw aside that law of primogeniture which to him was so *sacred*” (*WWLN* ch. 93, my italics).

Carbury’s inheritance woes (like many other property inheritance cases in Trollope) reveal that “natural law” is no less communal and custom-based than common law. Trollope shows here that the immutability of natural law is immutable only as long as the communality and customs which it serves are stable and coherent. In fact, it is precisely the communal aspect of natural law that makes the two such a natural fit, as asserted by Blackstone. In other words, Roger Carbury’s quandary is not primarily due to changing legal customs or practices but a deeper change in the community to which he is committed and of which he is a part.

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### Conclusion

Victorian legal culture, we are beginning to realize, did not consist of a declining communal system that was being replaced by a positive one, but rather a society and legal system that was ostensibly positivist but was at the same time also inherently communal. In focusing on legal procedures, systems, and ideologies, many nineteenth-century reformers did not realize that all sides of the debate – positive law, empiricism, common law, and natural law, are all community-based. Expanding the scope of legal inquiry into the culture at large reveals what is missing from a more narrow focus on the history of doctrine and practice. It reveals that Trollope's obsession with the law and his obsession with social and communal formations are in fact one and the same. As I have shown briefly above, and elsewhere more at length, positive law and empiricism do not replace the lack of certainty and stability engendered by a rapidly changing society.<sup>7</sup>

While it is tempting to read in the novels a conservative Trollope yearning for the times of old, before the advent of a more relativist legal culture of positive law, a closer look reveals that his critique of natural law is just as strong. In different ways, his novels show just how much natural law – through the mediation of common law – was also just as dependent on communal, rather than absolute, values and customs. When Kieran Dolin writes that “the narrative desire for a just resolution of the plot depends finally on a legally conceived and culturally inherited sense of right,”<sup>8</sup> it is true of many of Trollope's novels, not only *Orley Farm*. However, my conception of legal culture shows that the “legally conceived” and “culturally inherited” are not separate elements that fuse together into a sense of right. Rather, as Trollope repeatedly shows, the basic tenets of the common-law legal conceptions are in themselves culturally inherited. Furthermore, it is precisely the cultural inheritedness of common-law practices and customs, by virtue of their commitment to time immemorial, and their symbolic power, that makes them authoritative legal conceptions.

Trollope's novels reveal a society and culture in flux, a flux that cannot be remedied either by a nostalgic appeal to older forms of the law or by an appeal to newer, ostensibly more appropriate ones. As becomes evident in these novels, the only thing left for Victorian law, culture, and society is to renegotiate a new commonality, one which is flexible enough to withstand rapid social change, yet strong enough to maintain ways for the making and maintaining of meaningful action and discourse.

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### NOTES

- 1 R. D. McMaster, *Trollope and the Law* (London: Macmillan, 1986), p. 11.
- 2 Kieran Dolan, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999), p. 99.
- 3 Marianne Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* (Chicago: University of Chicago Press, 1994), p. 25.
- 4 *Ibid.*, p. 147.
- 5 The common law includes both civil and criminal law; the former refers to the law of contract and tort, the latter refers to the law of crime. The common law may also refer to law administered by the common-law courts as distinct from equity, which was administered by the Court of Chancery, until its dispersal by the Judicature Acts of 1873–75.
- 6 David Lieberman, “Legislation in a Common Law Context,” *Zeitschrift für Neuere Rechtsgeschichte* 271 (2005), 1.
- 7 See also Ayelet Ben-Yishai, “The Fact of a Rumor: Anthony Trollope’s *The Eustace Diamonds*,” *Nineteenth-Century Literature* 62:1 (2007), 88–120.
- 8 Dolin, *Fiction*, p. 117.