Abstract—The Impossible Contract: Law, Parentage, and the Victorian Novel

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This manuscript examines the concomitant emergence of the Victorian novel of child development and the English law of child custody. It argues that in nineteenth-century England, novelists and courts turned as never before to childhood experience, and in the process began to question what makes someone a child's parent, and why and how parentage matters for a child, with a particular focus on the connection between parentage and social class. The manuscript charts the reformulations of childhood and parentage that this new attention to childhood produced, and argues that these were in tension with the preeminent legal trend of Victorian England: the rise of contract. The manuscript contends that during the course of the nineteenth century, cultural and legal attention to childhood was cordoned off into specialized realms—the space of the novel and the exceptional field of family law—in ways that deflected attention from the tension between emerging ideas about the importance of childhood experience in forming the adult self, on the one hand, and freedom of contract doctrine and the promise of free individual choice, on the other.

The opening chapter, "Nature, Nurture, Narrative, Law: The Wellesley case, Oliver Twist, and the Victorian Anxiety about Parentage," identifies Charles Dickens's 1838 Oliver Twist as the first novel of child development. It reads Oliver Twist alongside a prominent 1827 custody dispute, and shows that both feature stories of well-born children raised against the grain of their birth by monstrous parents. With England on the verge of extensive legal and political reforms, the narrative of the unfit parent expressed anxiety about the nature and relevance of parentage in a newly fluid social regime. By combining this narrative with the story of a dislocated and orphaned child, Oliver Twist raised a series of questions that would continue to animate the Victorian novel of child development and Victorian child custody law: What made someone a child's parent? Did parents shape their children through nature or nurture? And to what extent could the parent-child tie be protected, or reconfigured, through narrative or law?

In Chapter Two, "The Dislocation of Existing Ties: Silas Marner and the Story of Adoption," the manuscript reads George Eliot's 1861 novel of adoption in the context of English adoption case law. With a fantasy of an adoption without law that saves both the adopted child and 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. Eliot registers a shift from a legal to a narrative definition of parentage that is also visible in nineteenth-century adoption case law. This shift, in turn, was accompanied by the increasing tendency of adoptive parents to claim a right to custody on the basis of a legal instrument such as a contract or will that purported to rewrite parent-child ties, and the reluctance of courts to enforce such contracts. The chapter explores some of the larger anxieties that animated the resistance to legal adoption in both Eliot's novel and English case law.

The manuscript shifts perspective in Chapter Three, "The Impossible Contract: Childhood and the Limits of Contract in Great Expectations." Whereas the first two chapters discuss the exceptional area of English law that regulated child custody, the third chapter examines the connections between the Victorian novel of child development and
the Victorian legal trend that dominated the realm of adults: the rise of contract. In his best-selling 1861 legal history *Ancient Law*, Henry Maine claimed that English society had undergone a progression "from Status to Contract." By reading Dickens's 1861 *Great Expectations* alongside *Ancient Law* and two other paradigmatic texts of Victorian individualism, John Stuart Mill's 1859 *On Liberty* and Samuel Smiles's 1859 *Self Help*, Chapter Three illustrates how the Victorian novel of child development brought into question the assumptions of the individualist freedom-of-contract ideology that was at its height in mid-Victorian England. With the story of a child who agrees to a contract that seemingly enables him to choose his own identity by choosing his own adoptive parent, *Great Expectations* suggests that the premises of freedom-of-contract theory, and more generally of liberal individualism, would hold true if and only if children could form what is necessarily an impossible contract—a contract by which they choose the parents who make them who they are.

Together, Chapter Two and Chapter Three explore the growing literary and legal consensus that childhood and law are best kept apart. These chapters argue that the resistance to bringing together childhood and law in the form of parentage contracts—a resistance that continues to this day—stemmed, in part, from the discomfort engendered by the contradictions between Victorian contract doctrine, which promised self-determination and freedom of choice for all adults, and Victorian theories of child development, which emphasized the extent to which childhood experience determines the adult self. The manuscript locates the origins of this contradiction in the late seventeenth-century writings of John Locke, who in his political writings set forth the model of individual liberty founded on contractual consent that became the foundation of laissez-faire individualism, and in his writings on epistemology and education popularized the notion that children are formed into their adult selves by their upbringing and early experience. By the Victorian age, these two paradigms were both highly influential. They were also deeply at odds with one another. The tension between them, the manuscript argues, was one of the driving forces behind the novel of child development.

Toward the end of the nineteenth century, in the wake of the 1857 Divorce Act, Victorians became increasingly preoccupied with marriage and divorce. The fourth and final chapter, "Parentage and the Marriage Contract in *Jude the Obscure*," reads Thomas Hardy's 1895 *Jude the Obscure* as suggesting that the new attention to the institution of marriage, while bringing to the foreground the role of gender in constructing social identity and limiting individual opportunity, deflected unresolved questions about parentage and social class that had been raised earlier in the century by the novel of child development. Through a story of child development that veers into a story of a life seemingly destroyed by marriage and divorce, *Jude the Obscure* suggests that the late-Victorian preoccupation with marriage and divorce displaced problems of individual freedom and social inequality—problems that stemmed largely from the continued relevance of parentage in determining social class—onto the site of the marriage contract. The chapter concludes by reading the climactic scene of *Jude the Obscure*—a bizarre and allegorical scene of child-suicide that critics often point to as breaking with the conventions of the realist novel—as indicating that the problems raised by the novel of child development could not be resolved on the individualistic level on which both the novel and the law of contract operate.