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Introduction: Spurious Issues
Margot Finn, Michael Lobban and Jenny Bourne Taylor

At the beginning of the Third Epoch of Wilkie Collins’s novel, *The Woman in White* (1859–60), the hero, Walter Hartright, writes of himself and his accomplice, Marian Halcombe:

We are numbered no longer with the people whose lives are open and known ... We two, in the estimation of others, are at once the dupes and the agents of a daring imposture. We are supposed to be the accomplices of mad Anne Catherick, who claims the name, the place, and the living personality of Lady Glyde....

In the eyes of reason and of law, in the estimate of relatives and friends, according to every received formality of civilised society, ‘Laura, Lady Glyde’ lay buried with her mother in Limmeridge churchyard. Torn in her own lifetime from the list of the living, the daughter of Philip Fairlie and the wife of Percival Glyde might still exist for her sister, might still exist for me, but for all the world besides, she was dead.... socially, morally legally – dead And yet alive!

Wildly popular, *The Woman in White* is now generally considered to be the first, and in many ways the most successful, example of sensation fiction. Sensation novels were notorious for transposing the exotic settings of gothic fiction into the modern everyday world, generating extreme emotional and nervous responses by exploiting the tensions that lay at the heart of the upper-middle-class family – above all by playing on the fragile line that separates a ‘legitimate’ from an ‘illegitimate’ identity. In *The Woman in White*, Laura Fairlie,
the rich, privileged heiress cajoled into a dynastic marriage with her late father’s old friend Sir Percival Glyde, becomes the victim of her husband’s conspiracy to appropriate her wealth by substituting her with her uncanny double, the working-class Anne Catherick, and incarcerating her in Anne’s place in a lunatic asylum. The twist of the story hangs on the fact that even after Laura is rescued by her sister Marian and presented to her uncle, he is unable to recognise her. As Walter Hartright realises, once the social, economic and perceptual frameworks that distinguished Anne from Laura have broken down, ‘Strangers, acquaintances, friends even…might have doubted if she were the Laura Fairlie they had once seen, and doubted without blame’ (p. 443). Anne Catherick herself is doubly illegitimate: weak-minded, obsessive and paranoid, she is finally revealed to be Laura’s unacknowledged half-sister, while the ‘secret’ that she unwittingly held, and for which she was incarcerated, was that Sir Percival himself was not only a bastard, but had forged his parents’ name in the marriage register to gain his title and land.

The Woman in White is a striking example of the uses of illegitimacy as a narrative device, and the power of the novel hinges on its success in bringing together apparently disparate understandings of the term. First, the two secrets of illegitimate origins at either end of the social scale imply distinct concepts of the legitimate family: Sir Percival’s concealed bastardy emphasises the centrality of formal legitimacy over blood ties alone for the transmission of wealth and property; while Anne’s hidden relationship with her sister plays on the moral as well as the biological bonds of kinship. Secondly, Laura’s loss of both legal identity and coherent subjectivity highlights what it means to be a social person, while the struggle to restore her to name and sanity is bound up with Walter Hartright’s own social transformation from lower middle-class drawing master to the father of a propertied heir. The powerful effects of The Woman in White relied on the directness of its multiple narrative voices, each witness giving evidence as in a court of law, but in ways which emphasised the unstable and provisional nature of evidence and truth. And beyond the text, the sensation novel more widely was regarded as a bastard genre, the product of an increasingly commercialised and globalised literary marketplace, which mingled elements of the Newgate novel, gothic fiction, realism and popular melodrama and promiscuously brought together very different audiences.
The Woman in White thus placed bastardy at the centre of a nexus of concepts of identity, truth, deception and imposture, and throughout his career Collins both probed the legal construction of an ‘authorised’ identity and extended its boundaries. In No Name (1862), for example, Magdalen Vanstone attempts to steal back her place through performance and imposture when the Vanstone sisters are discovered to be bastards through the vagaries of English common law. Man and Wife (1870) was written in the immediate aftermath of the 1868 Royal Commission into the confusing and contradictory laws of marriage in England and Scotland and Ireland and plays on the slippery definitions of marriage and legitimacy that the Commission attempted to address. Collins’s early story, ‘Fauntleroy’ (1858), gives a sympathetic account of the last man to be hanged in England for forgery, while his last, uncompleted novel Blind Love (1889) hinges on the substitution of a living man with a corpse in the service of an audacious insurance fraud. The runaway success of sensation fiction, together with the wider preoccupation with the discovery of hidden kinship through illegitimate origins that pervades nineteenth-century literature, suggests that these connections would have resonated powerfully with the large and diverse novel-reading public of the mid nineteenth century. It implies, too, that the widespread preoccupation with the idea of legitimacy in the broadest sense, its enactment, its ideological underpinning and its ultimate fragility, spanned a wide range of social and legal practices, cultural forms and institutions.

The word ‘illegitimate’ is initially defined in the Oxford English Dictionary as ‘not in accordance with or authorised by law; unauthorised, unwarranted, spurious’. This is then broken down into two further definitions – ‘not born in wedlock, bastard’, and ‘not in accordance with rule of reason; not correctly induced or inferred’. This interdisciplinary collection of essays takes this slipperiness of meaning as its starting point. Animated by scandals, scoundrels and impostors, it explores questions of identity, trust and deception in nineteenth-century Britain, probing how illegitimacy throws open definitions and concepts of what is ‘legitimate’ itself. The essays range between social history, legal history and fiction, and while they raise different questions they are linked by a set of common themes. How is a legal identity created and maintained? What does it mean legitimately to belong – in a family, and in a place? What
social and cultural tensions exist between different legal codes, between formal and informal, contractual and affective, concepts of legitimate relationships and identity, and how do these contribute to our understanding of the family? What are the cultural reactions to fraud and imposture, whether used for economic gain or social advantage? How might self-consciously illegitimate behaviour operate as a form of opposition to the dominant codes of legitimate society and what kinds of political agendas does this open up? Above all, what are the tensions among what contemporaries considered morally legitimate, what they considered as legally legitimate, and what they considered as legitimate in social practice? This introduction will tease out some of these underlying questions and set out a historical context for the essays by briefly investigating how this flexible concept expanded its public and private meanings during the nineteenth century.

The boundaries of belonging: family, place and nation

The first three essays included in this collection focus on the question of legitimacy and illegitimacy in the context of personal identity. They explore the question of how far a person’s identity and standing in her family, her locality and in the wider world was determined by legal rules, and how far ideas of identity and legitimacy transcended law, and were determined by ties of emotion. Our starting point is therefore with the concept of bastardy, looking at the position of those whose claims challenged the security or identity of the family. As social historians have frequently stressed, the distinction between legitimate and illegitimate birth marks the intersection of a range of economic, social and cultural practices, including the codes surrounding inheritance and property transmission; customs governing naming, genealogy and kinship; concepts of reproduction and the control of sexuality, and religious and moral systems. These practices and meanings were underpinned by different kinds of legal rules and structures, as well as distinct wider concepts of legitimacy. As David Beetham has argued, legitimacy in the wide sense always depends on the ability of dominant political and social systems to underscore formal legal conventions with the dual authority of ideal normative principles and broad social consent; but it is extremely seldom that these elements are unproblematically aligned.
The unsettled status of bastardy illustrates these tensions forcefully. The legal system had long attempted to set down clear rules which would ensure that patrimonial property would descend to legitimate heirs. ‘All well-regulated Governments have laid down and settled certain Rules of Propagation as necessary to the very Being of Human society’, noted Matthew Bacon in 1736. ‘Hence the Solemnity of Marriage was established, not only to prevent Lewdness, but as a Regulation, without which there could be no distinction of families, and consequently no Encouragement for Industry, or Foundation for Acquiring Riches.’ The child born outside marriage was therefore defined as *fillius nullius* – nobody’s child – under common law. He or she had no legal next of kin, and could not succeed to titles or to any hereditary position as a member of family. The rule that illegitimate children could not inherit was modified in practice by testamentary freedom, under which bastards could acquire property through family settlements or personal gifts. Peter Featherstone’s illegitimate son Joshua Rigg in George Eliot’s *Middlemarch* (1870), who is left the property promised Fred Vincy, is a striking fictional example of this practice.

In contrast, canon law, which defined the family as an affective and social unit underpinned by natural law principles, regarded it as a moral duty for parents to support their children regardless of their legitimacy, and early modern ecclesiastical courts heard suits brought against fathers of illegitimate children for payments. English law did recognise the duty of a father to maintain his illegitimate child, under the poor law statutes dating back to Elizabeth’s reign, though the intention behind this legislation was to minimise costs to the parish rather than to cement the bond of parent and child. But the notorious bastardy clauses of the 1834 Poor Law Amendment Act removed any obligation of support from the father, placing the entire burden on the mother.

Children born outside wedlock were unambiguously illegitimate at common law. Whereas both European civil law and canon law (which remained the basis of Scottish laws of marriage and legitimacy after the Act of Union in 1601) allowed children whose parents married after their birth (provided no impediments existed) to be retrospectively legitimised, English common law staunchly forbade this, ruling that a person born illegitimate remained so for life. This rule of indelible bastardy (which had been famously upheld by the
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Barons at the Statute of Merton in 1236 and was only repealed by the Legitimacy Act of 1921) was seen, like the common law notion of coverture, as an anachronistic hangover of feudality by some writers by the mid nineteenth century. The liberal lawyer J.S. Wharton for example described it in 1853 as ‘denying to parents an opportunity of redressing a wrong, and thus visiting, in spite of everything, the sins of the fathers upon the children’, and his view is directly echoed by the Vanstone’s lawyer in Wilkie Collins’s *No Name* in 1862. The common law’s insistence on indelible bastardy also highlighted discrepancies within the United Kingdom, in particular between England and Scotland, over who was and was not legitimate: ‘Nothing could be more absurd than for a person to be a bastard in one country and lawful in another, merely by crossing a river or passing a mountain, the boundary of their respective territories’, argued counsel in the case of *Shedden v. Patrick* in 1803 (a legitimacy dispute which ran until 1869). The situation was more complex when it came to the position of ‘adulterine bastards’, or children born within marriage as a result of the wife’s adultery – the subject of Margot Finn’s essay on the Barlow divorce case. English law famously had a double standard, according to which a husband could seek a divorce on the grounds of his wife’s adultery, while a wife could not complain at law of her husband’s infidelity. This double standard may be explained by a desire to secure stable patrilineal inheritance through continuous blood lines: wifely infidelity was regarded as ‘the highest invasion of property’, for it introduced spurious issue into the heart of the family. Nonetheless, both English and European law followed the Roman law principle that *pater est quem nuptiae demonstrant* – ‘he is the father, whom wedlock declareth’. There was a presumption that the child born to a married woman was the legitimate offspring of her husband; and the desire for social stability and continuity made this presumption a very difficult one to overturn. Shakespeare’s *King John* for example, opens with an investigation into Philip Falconbridge’s legitimacy, and while the trial results in Philip ‘the Bastard’ actively choosing noble illegitimate status by claiming Richard Coeur de Lyon as his natural father, King John still emphasises the common law *status quo*: ‘Sirrah, your brother is legitimate; /Your father’s wife did after wedlock bear him, /And if she did play false, the fault was her’s; /Which fault lies on the hazards of all husbands which marry wives’
(1.i. 116–20). Indeed under common law the legitimacy of a child born within wedlock could only be rebutted – even if the wife had clearly had a lover – if there was proof of the husband’s impotence, his separation for his wife by a judicial decree or his absence from the realm at the time of the child’s conception. 14

While this legal presumption of legitimacy was aimed to provide clear rules to determine the status of children born to a married woman, it caused much disquiet to numerous aristocratic families, who feared that their fortunes would fall into the hands of spurious issue. The rule was successfully challenged in the Banbury peerage case, a case which had begun in 1661 and was only settled in 1813. By deciding that the presumption was a factual one, rather than a legal one, and one which could be dislodged by evidence, the House of Lords smudged the bright lines which the common law had sought to draw for adulterine bastardy. The Banbury case was notorious both for its longevity and for the fact that it involved the bastardisation of children without an accompanying Parliamentary divorce. Sir William Knowles, Earl of Banbury, had died apparently childless, aged 85, in 1632. His widow, the Catholic Lady Jane Howard, over thirty years his junior, had quickly married Edward Lord Vaux, also a Catholic, and soon after produced two young children who had undoubtedly been born during her first husband’s lifetime and who, she claimed, were Sir William’s lawful issue. The case fell into abeyance during the Civil Wars and the Commonwealth, but when Lady Jane’s son Nicholas attempted to take his seat in the Convention Parliament leading up to the Restoration, his legitimacy was successfully challenged by his peers. There followed the presentation and scrutiny of at least eight petitions by Nicholas and his descendents, before their claim of his legitimacy was finally defeated in 1813.

Yet although Nicholas’s descendents finally lost, and the case rang the death-knell on the common law’s presumption of legitimacy in cases where circumstantial or medical evidence suggested otherwise, a strong rearguard action was launched in the final debates on the Banbury case in the Lords. Thomas, Lord Erskine, arguing for the claimant, resolutely defended the law under which the presumption of legitimacy applied, ‘whatever moral probability may exist of the adulterer being the father’. ‘Women are not shut up here, as in the eastern world, and the presumption of their virtue is inseparable from their liberty’, he insisted. ‘If the presumption were once overthrown,
the field would be laid open to unlimited inquiries into the privacy of domestic life: no man’s legitimacy would be secure, and the law would be accessory to every species of imposture and iniquity.’¹⁵

‘We must not overlook the dangers of trusting too implicitly on circumstantial evidence’ argued Sir Samuel Romilly, also defending the Banbury claim. ‘If the connection between cause and effect in the material world has so long baffled every philosophical enquirer, surely we ought to approach with similar diffidence an investigation into the moral world?’¹⁶

The arguments surrounding the Banbury claim in the early nineteenth century demonstrate that Lawrence Stone’s description of the increase in Parliamentary divorce as symptomatic of the rise of affective individualism is in many ways far too simplistic. Both the defendants and opponents of Nicholas Knowles’s claim laid more emphasis on the social and affective definition of paternity over biological bonds. The counsel for the claimant warned of the hornet’s nest that might be opened up by denying the liberty of English women; the Crown’s counsel, Lords Ellenborough, Eldon and Redesdale argued that Sir William had never publicly acknowledged his son – indeed had apparently been unaware of his existence. This is not to say that biological paternity was considered unimportant, only that other definitions of the family were equally in play. A few years after the Banbury case was resolved, the public was excited by the Gardner peerage case in 1825. Here two claims were made to a barony: the first by the son of Captain Gardner’s first wife, whose legitimacy was disputed; the second by the son of his second spouse. The first Mrs Gardner had left her husband’s ship at the end of January 1802, and was delivered of a child on 8 December that year. Could a pregnancy really last 311 days? After much medical evidence was heard on the length of gestation, the title passed to the second son.¹⁷

Margot Finn’s discussion of the scandal that surrounded the family of Sir George Barlow two years after the conclusion of the Banbury case also reveals the complex relationship between law and feeling in shaping family identity. Her account of this imperial family culminates in Sir George Barlow’s suit against his young ward and relation, Major George Edward Pratt Barlow, for criminal conversation with his wife Eliza, in an action which culminated in a statutory divorce. Young George admitted the charge, but the proceedings (to determine damages) allowed the jury to hear two stories about the
adulterous relationship. On the one hand, there was a story of the romantic love of two individuals to each other and their natural son. On the other, there was a tale of trust betrayed, and the wider betrayal of a larger family network, held together by an intricate network of relationships across the empire, which did not rest on the foundations of simple affective individualism.

As Finn shows, neither the law nor the Barlow family was won over by the lovers’ appeals to the heart. Eliza was expelled, along with her lover, and their child. The bonds of love were not to be permitted to unsettle the norms of conduct needed to hold together an imperial family. It was this imperial structure which had at once created the confusing ties and roles within the extended legitimate family and which determined the illegitimacy of Eliza Barlow’s excessive romantic affection for her husband’s ward. In the event, it was the morality of the imperial family, and its demand of loyalty and trust, which determined the illegitimacy of the couple’s conduct, and their son’s status, as much as the law did. For the child of the affair, Frederick, remained at law – if not in the world – a legitimate heir of Sir George Barlow, since the cuckolded Indian civil servant was not permitted by law to give evidence in any suit to bastardise the boy.

Josephine McDonagh’s study of *Bleak House* (1852–3) shows that mid-nineteenth-century novelists like Dickens offered a very different view of the rival demands of dynastic lineage and romantic affections, and of the role of law in their determination, than was favoured by the Barlow family. Law itself, in the form of the Court of Chancery, stands famously condemned in the novel: a symbol of Old Corruption, fleecing all who come to it, it seemed to encapsulate the very illegitimacy of the unreformed legal system. In this world, true authenticity is found in the heart of Esther Summerson, the illegitimate child. Literary representations of illegitimacy in this era frequently highlight the natural child as the source of ‘true legitimacy’. The privileging of natural affection and romantic love over the repressive codes of formal law and the worn out claims of hereditary privilege is one of the key strategies for consolidating the cultural and emotional authority of the novel itself.

While Esther’s excessively self-effacing narrative dramatises her internalisation of her marginality, her higher legitimacy is also borne out by her performance of feminine virtue, and her standing outside the framework of an anachronistic and soul-destroying legal system.
The contrast between the virtuous bastard son and the corrupt or incontinent heir (reversing the kind of legitimate/illegitimate opposition that is found in the Edmund/Edgar pairing the Shakespeare’s *King Lear*) is a significant thread running though the mid-century novel. It is perhaps most starkly portrayed in Dickens’s *Oliver Twist* (1837–9), in which the orphaned and abandoned love-child resists the criminalisation that his legitimate half-brother, the degenerate product of a loveless marriage, sets up for him. It can be found in the contrast between the two Allan Armadales in Collins’s novel of 1866, and it re-emerges in the doubling of the two Ralph Newtons, the profligate and directionless legitimate heir under the entail and the idealised and much loved natural son, in Anthony Trollope’s *Ralph the Heir* (1870).

McDonagh’s essay also explores the ties between identity and place. As she shows, it is not only the Chancery which manifests the illegitimacy of the existing system of law in *Bleak House*, for Dickens uses the novel to present a critique of the settlement requirements of the Poor Law. While the Poor Law gave a basic entitlement to support for the pauper – albeit an increasingly harsh one in the age of the new Poor Law of 1834 – a parish faced with the claims of a pauper could remove her to her place of ‘settlement’, which was the parish legally liable for that pauper. The laws relating to settlement was complex, and provided much fodder for lawyers. They were also – as McDonagh argues – ‘unsettling’ for the pauper, who could be removed to a place where she had not resided for years, if at all. In addition, their persistence was seen by critics as manifesting the stranglehold which the past held on the present, tying both individuals and the nation to past identities which had nothing to do with their present lives. In place of the false identities imposed by the ties of ancient settlement, or the strictures of the law of bastardy which left the blood relatives unsettled in the legal family, the novel offered a vision of bonds of sentiment, which could create ties of affiliation both in the affective family, and in the wider nation.

Where in *Bleak House* the law and the patriarchal family determined by rules of law both stand condemned, in Rohan McWilliam’s study of later nineteenth-century impostors, we encounter rogues seeking to exploit the uncertainties of the law of marriage to claim a new identity. Claims about secret marriages in the distant past could be unsettling for established families, including (as McWilliam’s discussion of Olivia Serres’s claim shows) the royal family itself.
A secret history could reveal that the world was not as one had thought it was. This could be unsettling for those whose identity was challenged, and alluring for those who could imagine themselves finding their ‘true’ identity to be one of grandeur and fortune. Claimants, imitating the truly noble, long lost heir found in literature, could attract large popular followings. In this way, they could both undermine the enduring authority of hereditary privilege, acting as a focus for radical impulses, and reinforce the status quo in his or her aspirations for advancement.

The legitimising narratives impostors used drew on literary conventions which pervade both sensation fiction and the realist novel. In George Eliot’s *Felix Holt* (1866), for example, the discovery of the hidden origins of Esther Lyon, and with it her claim to Transome Court, is set alongside the revelation of Harold Transome’s secret biological illegitimacy. Harold’s spuriousness reinforces both the emptiness of his political Radicalism and the essential fictiveness of the Transome’s claim to the estate. But Esther’s claim, like Harold’s, is equally tenuous: both highlight the problem of how to ‘find a clue of principle amid the labyrinthine confusions of right and possession’. Finally the Transomes retain their dubious possession of the estate while Esther chooses the ‘higher legitimacy’ of marriage to the working-class hero Felix Holt. Trollope’s *Lady Anna* (1874) reworks this theme. Josephine Murray’s obsessive quest to prove her daughter’s claim to be the legitimate daughter of Earl Lovel (her profligate husband who had pronounced their marriage invalid) is both supported as a *cause celebre* by the political radical Thomas Thwaite, and is finally abandoned when Anna refuses to give up her betrothal to Thomas’s son Daniel.

As McWilliam argues, impostor narratives have a timeless quality; but they are shaped by their historical context and dramatise contemporary anxieties and fantasies. Imposters are often charismatic, fascinating figures, who refuse to accept their legitimate roles; who both violate fundamental forms of social trust, and demonstrate (as Collins does) that social identity itself is unstable and labile, loosely held together by performance and the manipulation of perception. Sir Percival Glyde, the villain of Wilkie Collins’s *The Woman in White*, inextricably links the illegitimacy of the spurious heir, the impostor and the forger; but the hero Walter Hartright is also the victim of a conspiracy to dismiss his claims on Laura’s behalf as the work
of a mentally unstable fraud. *No Name* attacks the common law’s treatment of prenuptial children, yet Magdalen Vanstone’s attempts to steal back the inheritance she has lost by taking on a range of false personas ultimately lead to her breakdown – to the loss of self. Assumed, disguised and altered identities were the staple fare of sensation fiction. In Elizabeth Braddon’s *Lady Audley’s Secret* (1862) the arch manipulator, the blonde, fascinating Helen Talboys, successfully impersonates a penniless governess to marry bigamously into the aristocracy, attempting to murder her first husband when he returns from colonial speculation.

The boundaries of behaviour: fraud, forgery and fecklessness

In the second three essays in this collection, our attention turns away from questions of legitimacy and illegitimacy in the context of personal identity, to those of legitimate and illegitimate conduct in the world at large, and particularly the world of commerce. As Anthony Trollope noted in his *Autobiography* (1883), both he and sensation novelists like his friend Collins brought together question of legitimacy, trust and deception within the family and connected them to the wider social and economic sphere. Despite the ideological sanctity of the Victorian home, the boundaries between public and private were as slippery and unstable as those between legitimacy and illegitimacy. As Rebecca Stern has recently argued, the home was a site of employment, exchange and purchase, and like the wider marketplace, was vulnerable to various kinds of speculation, false dealing and fraud.20 While the challenge posed by interlopers, was that landed estates and titles might fall into the wrong hands, it was not just ‘old wealth’ which was concerned with legitimacy anxieties. As increasingly large amounts of middle class and aristocratic wealth and income took the form of paper investments, such as government securities, shares in joint stock companies, and insurance policies, new questions about the legitimacy both of paper wealth and of those who made their fortunes through it came to the fore.

By 1800, the entire British state rested on a complex system of paper credit. The eighteenth-century growth of the ‘fiscal – military state’ had led to a massive expansion of the national debt, to pay for wars.21 This debt – which had already caused concern in the 1780s – grew
further still as a result of the revolutionary and Napoleonic wars, and led to increasing anxiety. The suspension of cash payments in 1797, and the increase in the circulation of paper money, appeared to many to reveal a society living dangerously on false credit. This system of paper money and high debt came in for trenchant attacks, notably from William Cobbett, who saw it as insubstantial and unstable. For if the fiscal system appeared to threaten financial bankruptcy for a nation whose debt seemed too large ever to be paid off, it also opened up space for the illegitimate acquisition of wealth. This was not a new concern, for there had long been suspicion of those who had suddenly acquired new wealth through commercial activity, which they then used to buy their way into landed society. Virtue had long been associated with landed wealth, while moneyed interests were associated with corruption. While even traders and manufacturers came in for ‘prolific literary attack’, the greatest anxiety centred on the activities of speculators, who used paper money to get rich quickly, at the cost of the prudent landholder and fundholder, whose assets were being eroded by inflation. It seemed to many that a nation built on paper could not stand. By 1822, parliament had pledged itself to the return of the gold standard, but debates continued to rage over whether ‘sound money’ needed to be backed by gold.

While paper money remained essential to the working of the economy, its vulnerability created anxiety. It was clearly evident that every trader and every family had to make use of forms of credit, such as bills and notes; yet there was much debate over what constituted secure, legitimate paper. There had been much debate at the end of the eighteenth century over the use of bills of exchange which were made payable to fictitious persons, and indorsed in their names. The use of ‘accommodation bills’, which were instruments drawn simply to raise money on the market, rather than representing a real transaction, also generated much disquiet. Many urged the Bank of England to distinguish between ‘real bills’ – those representing proper mercantile transactions – and speculative, unsound paper. But in practice, the distinction proved very difficult to make, and by the 1830s, lawyers had given up the attempt to avoid giving recognition to accommodation bills. This meant that the same instrument might be used in a way that was regarded as economically legitimate, and in a way which was not; and that the law would not help
resolve the difference. The prevailing commercial morality would
determine what was legitimate in the world of business. A trader or
investor who took too big a risk with paper wealth would be seen as
a speculator or gambler, jeopardising his own wealth and that of the
wider society, while a trader who used the same instruments for the
purposes of sound trade would be regarded as legitimate.

It was not such instruments themselves which were dangerous, but
the use which was made of them. Vital as they were to the economy,
they offered the temptation to illegitimate actions, which in turn
might threaten everyone. The greatest threat came from forgery.
As Randall McGowen has shown, draconian legislation was passed
in 1729, in the aftermath of a particularly notorious case of forgery,
which imposed the death penalty for this offence.\(^28\) In passing
this legislation, it was acknowledged that paper credit was so vital,
that ‘the utmost care ought to be taken to preserve that credit’.\(^29\)
Eighteenth-century thinkers had no doubt of the need for forgery to
be punished severely, on the gallows. As Adam Smith put it, ‘nobody
complains that this punishment is too severe, because when con-
tracts sustain action property can never be secure unless the forging
of false ones be restrained’.\(^30\)

The security of property became deeply entwined with notions of
identity and authenticity during the second half of the eighteenth
century. Real life trials – such as those of the Perreau brothers and
Mrs Rudd – captured the public imagination, as the press fed a
hungry public with a story which both worked on their fears for
the financial stability of the kingdom, and invited them to condemn
the forgers’ attempts to refashion their identities by conspicuous
consumption.\(^31\) It was not merely the forger’s actions which posed
a threat, but his motives. In the words of the *Town and Country
Magazine* in 1790, it was the duty of a man ‘to live within his fortune,
that he may not give encouragement to general waste, and become
a means of introducing universal poverty and misery’.\(^32\) The forger
went one step further – not merely living beyond his means, but fir-
ing an arrow into the very heart of credit. By the early nineteenth
century – in the era when all payments were made in paper, rather
than gold – there was increasing concern to root out forgers and
punish them in the most exemplary way.\(^33\) The forger was in many
ways the archetype of the man corrupted by the desire for the luxu-
ries of commerce, acquired in the most illegitimate of ways.
In his contribution to this collection, Randall McGowen examines the 1824 trial of Henry Fauntleroy, the last in a line of notorious high-stakes forgers, who met their end on the gallows, and a man whose trial caused a sensation in an era of economic instability. As he shows, the public reaction to the case was ambiguous – an ambiguity echoed in Wilkie Collins’s original title of his story about the man, ‘A Paradoxical Experience’.34 On the one hand, Fauntleroy’s general character and behaviour bore the hallmarks of what was thought illegitimate – a mistress, a taste for luxury, and a cold, calculating nerve when defrauding wealthy families of their investments. There were even rumours of his ‘having sprung at no very remote degree from foreign extraction,’ though in fact his lineage could be traced back to Richard II.35 On the other hand – and this is what Collins lays greatest stress on – his frauds were designed more to keep an ailing bank afloat, than to make personal gain. Fauntleroy’s story was a melancholic one; but even in an age when the Bloody Code of criminal law had come in for questioning, it was one which could only end in the ultimate punishment. In an age when evangelicals stressed that the sinner had to pay for his sins, judicial and political policymakers were hardly likely to wish to spare a man who had fallen as far as Fauntleroy, however sympathetic his fallen character might appear.

As McGowen suggests, it was the sight of a middle-class offender on the gallows which made the offence of forgery so sensational in Georgian England. Reforms to the Bloody Code at the start of Victoria’s reign ensured that no forger would again lose his life at the hands of justice. Nonetheless, if the mid-century criminal law was to prove relatively weak in rooting out ‘white collar crime’ broadly defined, commercial forgers and thieves continued to be prosecuted.36 Leopold Redpath, who had defrauded the Great Northern Railway of £240,000 by forging numerous deeds, was sentenced in 1857 to transportation for life. When, in the previous year, John Sadleir’s forgeries and frauds, relating to the Tipperary Joint Stock Bank, were discovered, he killed himself by swallowing poison on Hampstead Heath, giving Dickens his model for Mr Merdle in Little Dorrit (1855–7).37 The stories of these men were rehearsed in detail by David Morier Evans’s Facts, Failures and Frauds in 1859, appealing to a reading public whose appetite had been whetted by a growing literature of trial anthologies – which in turn were a rich source for sensation novelists.
If the execution of Fauntleroy and the suicide of Sadleir provided exemplary moral lessons as to the price to be paid by forgers and thieves, the late Georgian and early Victorian public also had to confront the issue of what moral blame attached to financial failure caused by less obviously blameworthy conduct. As Boyd Hilton has shown, the early nineteenth century was an age of evangelical pessimism, in which political economists such as Thomas Chalmers held that, if commercial society overstretched itself, by over speculation or by attempting to break through the natural bounds of the economy, then providence would provide the economic equivalent of the Malthusian check, through bankruptcy and business failure. Even in the era of mid-Victorian prosperity, the middle-class family remained financially vulnerable, and the stigma of bankruptcy remained a severe one. The theme of economic insecurity runs through much of the culture of the age. In art, literature and on stage, the very system of modern commercial society was often portrayed as unstable and threatening, with potential economic catastrophe around every corner, suggesting that corruption infected the very moneyed system. At the same time, bankruptcy was often portrayed as a kind of moral failure, suffered by the greedy, profligate and vain, while moral success was seen to come from thrift, hard work, and sobriety.

By the mid-nineteenth century the speculating, deceitful promoter had become an increasingly familiar figure. The ‘isolated, guilt-wracked’ Mr Merdle, commits suicide, as John Sadleir had done, after swindling thousands out of their deposits, and while Dickens had planned Arthur Clennam’s bankruptcy before the Sadleir scandal, he drew heavily on Sadleir’s exposure and fall. ‘I had the general idea about the Society business before the Sadleir affair’, he wrote to John Forster, ‘but I shaped Mr Merdle himself out of that precious rascality.’ The brazenly self confident and overbearing Augustus Melmotte in Trollope’s The Way We Live Now (1875) also seduces the gullible into coveting money attained by a form of gambling, and both promoters are portrayed as impostors who are not what they seem, and whose conspicuous wealth is shown to be insubstantial, based on credit acquired from the unsuspecting public. What made such figures doubly dangerous, both in fact and in fiction, was the circumstance that they were often beyond the reach of the law in a way that the criminal forger was not. This echoes the wider suspicion of
the law that pervades nineteenth-century fiction: if ‘the machinery of the Law could be depended on to fathom every case of suspicion, and to conduct every process of inquiry’, Collins wrote in The Woman in White, ‘the events which fill these pages might have claimed their share of public attention in a Court of Justice’. Bleak House is of course the clearest indictment of the corruption of the English legal system, but other novelists concurred. Mr Tulliver in George Eliot’s The Mill on the Floss (1860) regards the law as a ‘sort of cock-fight’ in which ‘the ends of justice could only be achieved by employing a stronger knave to frustrate a weaker’. And while Trollope is more sympathetic towards the English legal system than many of his contemporaries, he too, often portrays barristers as expert in concealing the truths revealed to the reader. In Orley Farm, for example, the sympathetically-portrayed perjurer and forger, Lady Mason, is acquitted of her crimes in the courtroom, though she has privately confessed them. Similarly, the reading public was thus often presented with a legal system portrayed as ineffective at rooting out injustices. The cost and complication of the law was shown to be such that it gave opportunities to rogues, while denying purer victims their vindication.

As Michael Lobban’s essay shows, the law was indeed often ineffective at punishing the speculator who had not committed forgery or theft. The law was expensive, it was unpredictable, and the judges often had difficulty in laying down rules to distinguish legitimate from illegitimate business practices. But if the law was slow to lay down clear rules, it was because commercial morality itself was ambiguous and hard to define. Just as the use of bills and notes was natural and necessary in the growing capitalist economy, so was company promotion and investment. Investment and promotion were not themselves illegitimate activities, though they could be pursued in an illegitimate manner. Moreover, the criminality of a company promoter who merely persuaded a gullible and greedy investor to part with his money was not self-evident. In the decades when limited liability companies were novel, and share speculation risky, courts therefore did not seek to punish the speculative promoter, but rather sought to make him repay money obtained in a way they began to define as illegitimate.

Yet, as Lobban’s discussion of the career of Edward Hartmont demonstrates, the cunning speculator was often able use the complexities
of the law to his own advantage, to avoid repaying those investors who had invested in his schemes. The novelists' perception that the law was complex and weak was often accurate, but the moralistic denouement which saw the speculator cast out and suicidal was not replicated in the real world of commerce. If the morality preached in literature was that the honourable man should renounce speculation, and repay all his debts, the morality of the commercial world was more complex. For mid-Victorian businessmen, bankruptcy was not regarded as a social failure, leading to disgrace. In a volatile economic climate, creditors were often happy to come to arrangements out of court, to avoid the adverse publicity of being associated with insolvent debtors. The laissez-faire insolvency regime introduced in 1861 left it largely to a bankrupt's creditors to deal with his failure, and they were often happy to allow a man to relaunch his career with minimal recriminations.

In the literary responses to speculation, moral censure attached not only to the prime mover in fraud, but also to those seduced by fraudsters. In Trollope's *The Three Clerks* (1858), it is Alaric Tudor who ends up in prison for using trust money to fund his gambling speculations, rather than Undy Scott, who inveigles him into his schemes. Nineteenth-century literature is replete with honourable characters who stumble into financial ruin by becoming enmeshed in dishonourable speculations, such as Thackeray's Colonel Newcome and Dickens's Arthur Clennam. For such characters, financial bankruptcy is taken as a sign of their moral failure, but it is also an opportunity for moral redemption.45 Nor is it only those who are tempted to depart from the path of honesty who end up bankrupt. In Tom Taylor's drama *The Settling Day* (1865), the hero Markland, is an honourable banker who turns down a directorship in a bubble company. But he is threatened with bankruptcy when it turns out that his partner used the funds of the bank's clients to speculate.

By the mid-Victorian era, even the law was less harsh on those associated with fraudsters. Although (as Lobban shows) directors in joint stock companies continued to be forbidden from making undisclosed private profits from the firm, in the 1860s it was settled in litigation arising from the spectacular crash of Overend, Gurney & Co that directors were not to be held liable for losses they had played no part in incurring.46 A careless director who had lent his name to a firm, but closed his eyes to its manner of management, would not be
held blameable by the law for losses attributable to the active men. Unlike Col. Newcome or Arthur Clennam, the duped director would not feel duty bound to repay all the shareholders who had lost out from the dishonesty of others. The fact that the law did not take a tougher stance is partly explained by the view that those members of the public seduced by the promises held out of riches to be gained by buying shares on the stock market were as much to blame if they lost money as the men who seduced them. Moreover, since, in an age of limited liability, any investor was capable of managing his own risk, he could only hold himself to blame in case of insolvency.

Besides investing in securities on the Stock Exchange, nineteenth-century middle-class families put increasingly large amounts of their money into life assurance. Since the premature death of a breadwinner could be catastrophic for the financially vulnerable middle classes, such policies were an essential means of securing the family’s future. But they were also a form of investment in themselves, which could be sold on, or used as a security when raising credit. The very practice of life assurance, which was once associated with illegitimate gambling, thus came to acquire a central role in prudent middle-class saving. The fear that an insurance company might become an insubstantial bubble therefore created just as much anxiety as any other joint stock company. The failure of the West Middlesex Fire and Life Assurance Company in 1839 found its fictional equivalent in the Anglo-Bengalee Disinterested Loan and Life Assurance Company in Dickens’s Martin Chuzzlewit (1844). The spectre of life assurance company failures continued to loom large in the Victorian mind, notably after the failure of the Albert Life Office in 1869, and the European Assurance Society in 1871, which (as one victim put it) struck ‘like cold steel, into the very hearts of our English homes’. Timothy Alborn however shows that life assurance companies were themselves vulnerable to being defrauded by their policyholders, and raised questions about what it was to made a legitimate claim. In common law, insurance policies were contracts ‘of the utmost good faith’, requiring a complete disclosure by the policyholder of information relevant to the insurance. Those whose lives were insured were routinely asked by the company to answer questions relating to their lifestyle and health. But as Alborn discusses, those who took out policies were often less than frank about their habits, claiming to lead sober and salubrious lifestyles, when in fact they drank heavily
and suffered ill-health. When claims were brought by their heirs – or those (such as creditors) who had acquired the benefits of the policy – companies continued to contest the payment, where they suspected the person whose life was assured of intemperance. Such cases became trials of the nature of the claimant’s lifestyle, with juries being asked to determine the level of the policyholder’s sobriety. In repeated cases, juries decided that no breach of good faith had been committed by an applicant who had failed to mention the amount of liquor he consumed. Juries helped out widows who both needed the money and who wanted to defend their family’s reputation by taking the view that quite high levels of alcohol consumption were perfectly normal, particularly for aristocratic gentlemen. If financial failure threatened to spell the loss of position in respectable society for the financially vulnerable middle classes, a jury’s affirmation that the deceased man’s habits did not transgress the level of respectability demanded by the insurance company, could serve to ensure the family’s financial future.

Life assurance companies also contested making payments where the policy holder had committed suicide up until mid-century. Was suicide in effect a fraud on the company – an illegitimate means of obtaining a nest-egg for one’s family? Or was it instead a sign of a mental illness, rather than an immoral act? Judges debated these questions while the public soon came question the legitimacy of assurance companies’ refusal to give payment to a grieving family, on the grounds of suicide. Alborn’s paper shows a developing divergence between legal attitudes to what counted as a fraudulent claim and business attitudes. Where the lawyers continued to regard suicide as vitiating a policy, and sought clear lines to protect the companies, the firms themselves modified their policies to accommodate the moral expectations of their customers.

By exploring the resonances between and among legal interpretations, literary depictions and historical experiences of legitimacy and illegitimacy, the essays in this volume illuminate in new ways changes in both property regimes and human relations in eighteenth- and nineteenth-century Britain. Conceptions and representations in this period of personal identity, risk and entitlement all hinged fundamentally upon distinctions between the spurious and the genuine, yet these conceptions were themselves not only inherently fragile but also subject to substantial change as commercial society developed
Spurious Issues

apace. Fraudsters, imposters, bastards and writers of literary fictions all sought to exploit the fluidity of legitimacy as a concept and a definition to gain access to new audiences, kin networks and capital resources; at the same time, courts, insurance companies and poor law unions all struggled to limit access to social groups and economic gain by distinguishing sharply between illegitimate persons and their claims to inclusion. Yet, as the chapters that follow clearly demonstrate, legitimacy and illegitimacy were mutually constitutive – rather than invariably antipathetic – categories of analysis in eighteenth- and nineteenth-century law, literature and history. Spurious issues were not marginal by-blows of English law, society and culture, but rather lay at the heart of contemporary understandings of what it was to be a legitimate character, litigant or person in Georgian and Victorian society.

Notes

2. This collection does not attempt to make a substantial contribution to the social and demographic history of illegitimacy as an aspect of the history of the family – our stress here is on the ways in which different forms of illegitimate identity intersected or contrasted during the nineteenth century.
6. A bastard could inherit property under his parents’ wills, even when the parent devised property to his unnamed ‘children’, provided that the court was convinced, on a proper construction of the will, that there had been an intention to benefit illegitimate as well as legitimate children.
9. Although treatise writers did admit that, in theory, a bastard could be legitimized by statute: see for example William Blackstone, Commentaries


14. Sir Edward Coke, The First Part of the Institutes of the Laws of England, 10th edn (London: William Rawlins and Samuel Roycroft, 1703), p. 244. By the early eighteenth century, courts had rejected the idea that the husband had to be outside the king’s dominions for the presumption to be rebutted: Pendrell v. Pendrell (1733) 2 Strange’s Reports 925, reprinted in The English Reports, 93, p. 945.


18. See Jenny Bourne Taylor, ‘Bastards to the Time: Legitimacy as Legal Fiction in Trollope’s Novels of the 1870s’ in Margaret Markwick, Deborah Denenholz Morse and Regenia Gagnier (eds), The Politics of Gender in Anthony Trollope’s Novels (Aldershot: Ashgate, 2009), pp.45–60.


34. The story was initially published in *Household Words* on 13 November 1858, and was included in the short story collection *The Queen of Hearts* the following year as ‘Brother Morgan’s Story of Fauntleroy’.


42. Quoted in Weiss, *The Hell of the English*, p. 68.


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