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ALICE IN LEGAL WONDERLAND: A CROSS-EXAMINATION OF GENDER, RACE, AND EMPIRE IN VICTORIAN LAW AND LITERATURE

Kristin Brandser*

INTRODUCTION

Alice, in her final adventure in Wonderland, becomes increasingly bold during the trial to determine who stole the tarts of the Queen of Hearts. Alice knows she is growing back to her true size; she has experienced that “curious sensation” telling her that she is gaining her full personhood.1 Despite the Dormouse’s warning that she has “no right to grow here,” in this court of law, Alice decides to stay.2 And what a spectacle she makes of herself. She is loud; she literally upsets the jury; she interrupts and talks back to the judge. In fact, she shows no respect for the “stuff and nonsense” of the law itself or for any of its representatives: “‘Who cares for you?’ said Alice (she had grown to her full size by this time.) ‘You’re nothing but a pack of cards!’ At this the whole pack rose up into the air, and came flying down upon her.”3 As Alice comes into herself, chaos becomes the order of the day, and one senses that Wonderland’s system of justice will never be quite the same.

In this closing episode of Alice’s Adventures in Wonderland (1865), Lewis Carroll dramatizes what was to become an increasingly popular Victorian scene: a woman questioning and critiquing the law and claiming a place for herself within its institutions. The first half of Queen Victoria’s reign witnessed Caroline Norton agitating for a mother’s right to custody of her children and making minor inroads into a father’s absolute rights with passage of the Infant Custody Act of 1839.4 In her

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1 Lewis Carroll, Alice’s Adventures in Wonderland, in THE COMPLETE WORKS OF LEWIS CARROLL 17, 117 (Random House 1936).
2 Id. at 118.
3 Id. at 129.
4 Infant Custody Act, 1839, 2 & 3 Vict., c. 54 (Eng.). This Act made it possible for a Court of Chancery "to award mothers custody of their children under the age of seven and
1854 pamphlet *English Laws for Women in the Nineteenth Century*, Norton put on display the harsh realities of coverture, the legal fiction that took as its basic premise that, by marriage, the husband and wife became one person—the husband.\(^5\) While Norton argued that the law did not sufficiently protect women, Barbara Leigh Smith went much further in her 1854 publication, *A Brief Summary in Plain English of the Most Important Laws of England Concerning Women*, making clear that coverture must be completely abolished for there to be any possibility of equality between men and women.\(^6\) Norton, Smith, Bessie Parkes, and Mary Howitt were among a group of women active in the mid-1850s controversies surrounding married women's property and divorce law reform.\(^7\) All were greatly distressed by the Divorce and Matrimonial

access to their children under sixteen." MARY LYNDON SHANLEY, **FEMINISM, MARRIAGE, AND THE LAW IN VICTORIAN ENGLAND 1850–1895**, at 25 (1989). Norton was responsible for the introduction of this legislation, and her efforts have been acknowledged as very influential in getting this Act passed. *Id.*

\(^5\) The definition of coverture in Blackstone's *Commentaries* clarifies a wife's "non-existence" under the law:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection, and cover, she performs every thing . . . and her condition during her marriage is called her *coverture*.

WILLIAM BLACKSTONE, **COMMENTARIES ON THE LAWS OF ENGLAND 441** (George Sharswood ed., J.B. Lippincott & Co. 1861) (1765).

\(^6\) Norton claimed to have no problem with the law treating husband and wife as "one" so long as they were living together amicably, but when they were "living alienated and in a state of separation," the results were "unjust, unfit, and unnatural." CAROLINE NORTON, *English Laws for Women in the Nineteenth Century, in SELECTED WRITINGS OF CAROLINE NORTON* 167 (James O. Hoge & Jane Marcus eds., Scholars' Facsimiles 1978) (n.d.). Quite conservative in her published views, Norton asserts, "[w]hat I write, is written in no spirit of rebellion; it puts forward no absurd claim of equality; it is simply an appeal for protection." *Id.* at 2. However, as Mary Poovey has argued, the very act of making a public appeal was radical at the time, and her transformation "from the silent sufferer of private wrongs into an articulate spokesperson in the public sphere" worked to challenge "the entire ideological order that the legal and sexual double standard supported." MARY POOVEY, **UNEVEN DEVELOPMENTS: THE IDEOLOGICAL WORK OF GENDER IN MID-VICTORIAN ENGLAND 64–65** (1988). See SHANLEY, *supra* note 4, at 29–32 (discussing Smith's pamphlet, *A BRIEF SUMMARY IN PLAIN ENGLISH OF THE MOST IMPORTANT LAWS IN ENGLISH CONCERNING WOMEN*).

\(^7\) Norton created a great stir with the publication of *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (1855). CAROLINE NORTON, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill, in SELECTED WRITINGS OF CAROLINE NORTON*, supra note 6, at 58. Critiquing provisions of the proposed bill that allowed men to divorce adulterous wives but only allowed women to separate from adulterous husbands, Norton highlighted the injustice of this unequal treatment with scathing irony:

"[I]t is not good for MAN to be alone,"—but extremely good for woman. Hard that a husband should not divorce an adulterous wife! Hard that he should not form a "purer connection!" Hard (though he has a career and occupations out of his own home), that a second chance of domestic happiness should not again greet
Causes Act of 1857. Although the Act made it possible to obtain a divorce in England without a special act of Parliament, it also legislated a double standard by allowing a man to obtain a divorce upon proof of his wife's infidelity, whereas a woman had to prove her husband's infidelity plus incest, bigamy, or gross physical cruelty.

In the 1870s and 1880s, despite numerous setbacks, feminists such as Elizabeth Wolstenholme, Elizabeth Gloyne, Lydia Becker, Jessie Boucheret, Frances Power Cobbe, and Josephine Butler worked tirelessly to reform the laws affecting married women's property. They achieved limited success with the Married Women's Property Act of 1870, followed more than a decade later by the more comprehensive Married Women's Property Act of 1882. Cobbe was also very instrumental in the passage of the Matrimonial Causes Act of 1878, which of-

Parkes and Howitt joined Smith in her efforts to amend married women's property laws; they became involved in divorce reform when the legal issues were linked in the parliamentary debates of 1856 and 1857. Shanley, supra note 4, at 32–35.

8 Divorce and Matrimonial Causes Act, 1857, 20 & 21 Vict., c. 85 (Eng.).

9 Id. The 1857 Act included certain provisions that helped women escape the strictures of coverture. For example, if a woman was granted a separation decree, she was treated as a feme sole (an unmarried woman) with respect to her property and contracts. Also, if she was deserted by her husband, she could go before a local magistrate and receive an order to control her earnings as a feme sole. In 1857, Smith, Parkes, Anna Murphy, and Anne Jameson started The Englishwoman's Journal, which became the official paper of the burgeoning women's movement. Norman St. John-Stevas, Women in Public Law, in A CENTURY OF FAMILY LAW 261 (R.H. Graveson & P.R. Crane eds., 1957).

10 While the word “feminist” did not come into use in England until the 1890s, it is a fitting term for these women activists who were seeking increased rights and roles for women in law and society. See The Compact Oxford English Dictionary 579 (2d ed. 1991).

11 Under the Married Women's Property Act, 1870, 33 & 34 Vict., c. 93 (Eng.), a wife was entitled to keep her own wages and earnings made after marriage and passage of this law. Property belonging to her prior to marriage, however, was her separate property only if so agreed to by her husband in writing. She was entitled to keep personal property as one of the next of kin of an intestate or by the specific bequest of money (but only up to £200). The law did not address at all the limitations on a married woman's own testamentary powers. See generally Lee Holcombe, Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England 166–83 (1983) (discussing the legislative history of this Act, as well as why it was declared a “legislative abortion” in its final form). Under the much broader Married Women's Property Act, 1882, 45 & 46 Vict., c. 75 (Eng.), a married woman was considered to have the rights of a feme sole with respect to acquiring, holding, and disposing by will or otherwise of her separate property. Her separate property included all real and personal property that belonged to her prior to marriage, as well as her wages and earnings acquired after marriage. Married women were also granted the right to enter into contracts and to sue on their own behalf. See Dorothy M. Stetson, A Woman's Issue: The Politics of Family Law Reform in England 15 (1982) (discussing “the political influence of feminists on the development of divorce and matrimonial property law in England”). See generally Holcombe, supra at 184–205 (describing the legislative history of the 1882 Act).
fered much needed protection for women from domestic abuse.\textsuperscript{12} From 1869 to 1886, Butler devoted most of her seemingly unlimited energy to the campaign to repeal the Contagious Diseases Acts.\textsuperscript{13}

Victorian-era women were exerting much political influence, and were fortunate to be helped by male members of Parliament such as John Stuart Mill, Richard Monkton Milnes, and Jacob Bright.\textsuperscript{14} Efforts were made to eliminate the need for exclusive reliance on these "middlemen," however, as women strove to impact the law more directly—by voting, by being elected to public offices, and by becoming members of the legal profession itself.

In the first part of this Article, I will examine several legal cases in which women sought entry into law and politics. These cases illuminate how the common law (judge-made law) sometimes really was law made up by judges. While professing their impartiality, Victorian judges greatly influenced women's legal roles (by ruling they could not have any). I will then engage in a "cross-examination" of the representations of two surprising nineteenth-century characters—female judges, one fictional and one real: She-Who-Must-Be-Obeyed, or Ayesha, from Rider Haggard's 1887 novel She; and the real-life missionary, Mary Slessor, who was the first woman appointed as a magistrate in the British Empire.\textsuperscript{15} I use the term cross-examination in two interrelated ways. First, as in a legal proceeding, in which a cross-examination provides an opportunity to clarify or discredit testimony that is offered on direct examination. It is a method of probing gaps and openings in the direct testimony—places where it is possible and necessary to bring out important unstated, but related, issues (whether or not they have been omitted intentionally) in order to reveal a more complete story.

\textsuperscript{12} Matrimonial Causes Act, 1878, 41 & 42 Vict., c. 19 (Eng.).

\textsuperscript{13} Parliament passed the first Contagious Diseases Acts in 1864 and 1866 as "sanitation measures," designed to control the spread of venereal disease among enlisted men. Judith R. Walkowitz, Prostitution and Victorian Society: Women, Class, and the State 1 (1980). The Acts provided that plain-clothes "medical police" could apprehend any woman suspected of being a common prostitute and order her to submit to a genital examination to determine if she was infected. \textit{id.} at 2. If a woman refused to be examined, she was taken to a magistrate who could order her to submit to the examination under threat of imprisonment for failure to comply. Women who were found to be diseased were subject to involuntary confinement in hospitals until they were cured. When released, they were presented with certificates, verifying their status as disease-free women. \textit{See id.} (discussing the social history of these Acts and the repeal movement).

\textsuperscript{14} Thomas Talfourd introduced the Infant Custody Bill in 1839. Shanley, \textit{supra} note 4, at 25. Richard Monckton Milnes was supportive of many women's issues, including the reform of married women's property laws. \textit{id.} at 34. Lords Brougham and Lyndhurst advocated for women's rights during the debates on reform of divorce and property laws. \textit{id.} at 35, 39–40. John Stuart Mill, Jacob Bright, and George Shaw Lefèvre (who introduced the Married Women's Property Bill in 1868) agreed with Wollstoneholme, Butler, and Cobbe on the need to substantially rethink the institution of marriage. \textit{id.} at 67.

\textsuperscript{15} James Buchan, The Expendable Mary Slessor 138 (1981).
Second, by cross-examination, I mean examining texts from multiple perspectives. Thus, while my focus will be on Victorian representations of women, law, and power, my cross-examination will also take into account the imperial context in which they were set. In reading these texts that cross continents, I also will explore the intersections of gender and race. Both Ayesha and Slessor exercised legal power in Africa, and my analysis explores the ways in which, in the context of Empire, traditional ideas about gender were complicated and disrupted by racial politics when white women were ruling and judging indigenous people in Africa.

I. JUDGE-MADE LAW: ATTEMPTS TO REGULATE A GROWING CONCERN

At this moment the King, who had been for some time busily writing in his note-book, called out “Silence!” and read out from his book “Rule Forty-two. All persons more than a mile high to leave the court.”

Everybody looked at Alice.
“I’m not a mile high,” said Alice.
“You are,” said the King.
“Nearly two miles high,” added the Queen.
“Well, I sha’n’t [sic] go, at any rate,” said Alice: “besides, that’s not a regular rule: you invented it just now.”
“It’s the oldest rule in the book,” said the King.
“Then it ought to be Number One,” said Alice.
The King turned pale, and shut his note-book hastily.

—Alice’s Adventures in Wonderland

Flustered by the threateningly large presence of Alice in his courtroom, the King (who sits as judge in this proceeding) tries his best to make her leave. From his position of authority, he declares the law, which, it appears, he just made up. When Alice gets nowhere disputing the facts (she is not a mile high), she questions the law itself. At this point, the King confidently invokes precedent (“It’s the oldest rule in the book”), but it is not at all lost on Alice that this argument makes no sense.

When women started to claim their right to be in the world of law, to make and interpret law in both legislatures and courtrooms, judges found themselves stumbling, like the King, for applicable rules to keep them out. The “trouble” arguably started in England in 1866 when Barbara Leigh Smith Bodichon and several fellow feminists collected 1499 signatures on a petition for women’s suffrage. John Stuart Mill presented

16 CARROLL, supra note 1, at 124–25.
17 SHANLEY, supra note 4, at 51.
this petition to the House of Commons in 1866, and in 1867, he introduced an amendment to the Representation of the People Act ("Representation Act"). This effort to give women the right to vote in national elections was rejected, with "every conceivable argument, many of them contradictory ... employed to defeat the amendment."

In several parts of England, however, women householders registered to vote. When the names of 5347 women were excluded from the lists of voters in the borough of Manchester, these women took the matter to court. Having to make their arguments within acceptable legal frameworks, in Chorlton v. Lings they contended first that women historically did have the right to vote and that no subsequent legislation had taken that right away, and second (alternatively) that the 1867 Representation Act had conferred the right to vote if women did not possess it before. This latter argument was based on the applicability of Lord Brougham’s Act, which provided that “in all Acts Words importing the Masculine Gender shall be deemed to include females, unless the contrary ... is expressly provided.” Powerful ethical and philosophical arguments (such as that the fundamental principle underlying the Representation Act was that there should be no taxation without representation) had to be “fit” into those arguments deemed legally relevant.

As Chief Justice Bovill made clear in the opening remarks of his opinion in Chorlton, consideration of nonlegal arguments would be most inappropriate: “It is quite unnecessary to consider the general question of whether it is desirable that women should possess the franchise of voting at the election of members of [Parliament. What we have to determine is, whether by law they now possess that right.” The court proceeded to find that they did not, concluding that under the common law, women had been and still were legally incapacitated from voting, and that if the legislature had intended to make such an important alteration in the personal qualifications for voting in the 1867 Representation Act they would not have used the word “man” in the relevant provisions.

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18 The Representation of the People Act, 1867, 30 & 31 Vict., c. 102 (Eng.). This Act gave the vote to borough householders, extending the franchise “to virtually all English men except agricultural day-labourers.” SHANLEY, supra note 4, at 51.
19 St. John-Stevas, supra note 9, at 263. St. John-Stevas summarizes these arguments as follows: “Women didn’t want the vote: women did want it and would dominate the country: women wouldn’t use the vote if it were given to them: the amendment gave them too much: the amendment gave them too little: the country would be at the mercy of feminine caprice, etc.” Id.
20 Mary Abbott claimed that she was qualified and entitled to be placed on the list of voters. When the Revising Barrister for the borough of Manchester held that she was not so entitled, she appealed the decision to the Court of Common Pleas. The appeals of 5346 other women were consolidated. Chorlton v. Lings, 4 L.R.-C.P. 374, 374–75 (1868).
21 4 L.R.-C.P. 374 (1868).
22 Id. at 375.
23 Lord Brougham’s Act, 1850, 13 & 14 Vict., c. 21, § 4 (Eng.).
24 Chorlton, 4 L.R.-C.P. at 382.
25 The attorney for the women argued that if the legislators had intended to exclude
While women were thus foreclosed from voting on a national level, the Municipal Corporations (Franchise) Act of 1869 gave women the right to vote in local elections on the same terms as men.\(^{26}\) This right was gained from a late-night amendment offered by Jacob Bright; however, few seemed bothered by women's exercise of this municipal franchise, most likely because these elections primarily impacted issues closely associated with women's "appropriate" sphere (such as local schools, and care of the poor and elderly).\(^{27}\)

When Lady Sandhurst ran and was elected a county councillor by a clear majority, however, the Court of the Queen's Bench Division held that the right to vote in a local election did not grant to women a corresponding right to run for office. The applicable Municipal Corporations Act provided that "every person shall be qualified to be elected and to be a councillor who is, at the time of the election, qualified to elect to the office of councillor."\(^{28}\) However, the court determined that the word "person" as used in this provision did not include women (even while agreeing that there were places in the Act where "person" and even "he" had to be read to also mean "she").\(^{29}\) Therefore, the election of Lady Sandhurst was declared void, the votes for her thrown out, and the defeated candidate (who had brought the suit in the first place) deemed duly elected.

The judgment in \textit{Sandhurst} was upheld on appeal. Expressing commonplace judicial reverence for what (and who) had gone before, one of the appellate judges, citing the \textit{Chorlton} case, stated, "I take it that by neither the common law nor the constitution of this country from the beginning of the common law until now can a woman be entitled to exercise any public function. Willis, J., stated so in that case [\textit{Chorlton}], and a more learned judge never lived."\(^{30}\)

Soon thereafter, another woman was elected to the London Council. In order to take advantage of a provision in the applicable statute that an election not questioned for one year is deemed valid, she waited one year to act and vote as a member of the council. While the court in \textit{De Souza v. Cobden}\(^{31}\) held that this validity provision was inapplicable to the election of a woman, it had no problem holding her liable under the penalty.

women, they would have used the words "male persons" (which had been used in a provision of a related act) rather than "man," which, "by the express provision of Lord Brougham's Act, includes women." Id. at 379.

\(^{26}\) \textit{Municipal Corporations (Franchise) Act, 1869, 32 & 33 Vict., c. 55 (Eng.).}

\(^{27}\) \textit{SHANLEY, supra} note 4, at 109. School boards were created in 1870 by Forster's Education Act, 1870, 33 & 34 Vict., c. 75 (Eng.), and women were entitled to vote for and serve as members pursuant to this Act. Elizabeth Garrett was the first woman elected to a school board. In 1871, Mrs. Nassau was the first woman appointed as a poor law inspector. St. John-Stevas, \textit{supra} note 9, at 273.

\(^{28}\) \textit{Municipal Corporations (Franchise) Act, 1869, 32 & 33 Vict., c. 55 (Eng.).}


\(^{30}\) \textit{Id.} at 95 (Esher, J.).

\(^{31}\) 1 Q.B. 687 (1891).
section of the same statute—even though, to do so, it had to interpret the word “he” to also mean “she.”

The inconsistent wordplay in these “person” cases—with “man” sometimes meaning “person,” “person” sometimes meaning “he,” and “he” sometimes meaning “she”—made it uncomfortable to decide a case solely on the basis of the “clear” meaning of the statute. Thus, the common law was cited to lend credibility and authority to these word games. Citing the common law not only gave a judge the backing of the law’s glorified past, it also excused him from considering present-day realities; he could claim to be bound by the decisions of the judges who had gone before him. But as Albie Sachs and Joan Hoff Wilson explain, much of the common law’s venerated “history” is really fiction:

In the seventeenth century the common law had been yoked to a principle of the fundamental rights of the people of England as a weapon to challenge the divine right of the Kings of England. It drew its doctrinal strength from a claim to have existed since time immemorial, having its roots in an antiquity that predated the prerogative rights of the kings. In order to establish this ancient origin, a history was invented by the judges. This retrospectively created history was almost entirely fictional, but so strong was the need of the judges to assert the supremacy of the common law and the concomitant idea of uninterrupted custom, that contrary facts were simply ignored or treated as irrelevant. Essentially this fictionalized history represented a projection into the past of the current world-view of the judges. Coke was the leading exponent of this asserted antiquity, and it was Coke’s manufactured views that were relied upon for the next three centuries as having set out immemorial custom.

It was the fiction of the uninterrupted custom of women not holding public or political office that ultimately decided most of these “person” cases. Evidence to the contrary was ignored or deemed too scanty or insubstantial to call into question a grand common-law tradition of exclusion. Hence, in response to several fifteenth-century examples of women participating in elections provided by counsel to the women in the Chorlton case, the court responded:

It is quite true that a few instances have been brought before us where in ancient times, viz. in the reigns of Henry IV., Henry V.,

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32 Id. Women were not able to be elected as county or borough councillors until 1907, with passage of the Qualification of Women Act, 1907, 7 Edw. 7, c. 48 (Eng.). St. John-Stevas, supra note 9, at 274.
and Edward VI., women appear to have been parties to the returns of members of parliament; and possibly other instances may be found in early times, not only of women having voted, but also of their having assisted in the deliberations of the legislature . . . . But these instances are of comparatively little weight, as opposed to uninterrupted usage to the contrary for several centuries; and what has been commonly received and acquiesced in as the law raises a strong presumption of what the law is . . . .

This "acquiescence" continued as judges strove to characterize interruptions as anything but, with Lord Esher in De Souza, for example, determining that "by the common law of England women are not in general deemed capable of exercising public functions, though there are certain exceptional cases where a well-recognized custom to the contrary had become established, as in the case of overseers of the poor." The court in Jex-Blake v. Senatus (the case in which Sophia Jex-Blake and others sought the right to study and receive degrees in medicine from the University of Edinburgh) dismissed the notorious Victorian "interruption," the Queen, as an "illustrious and solitary exception" to the well-established common law rule. In this way, "the anti-feminism of one generation of judges was carried by the common law to the anti-feminism of another generation"—all under the guise of judicial neutrality. The mantra "women have always been excluded from public office" became one of the law's "truths"—one of the oldest rules in the book. But like the mile-high rule encountered by Alice, it had been made up.

While the courts would not address the issue of whether a woman was a "person" under the statutes governing admittance into the legal profession until 1913, women were actively considering legal careers as early as the 1870s. In 1876, a woman first applied to sit for the solicitors' examination, but was refused. The aspirations of another "young lady candidate" were foiled in 1879 when the Law Society, that "ungallant body" as the Solicitors' Journal somewhat smugly reported, "definitely

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34 Cheriton v. Lings, 4 L.R.-C.P. 374, 383 (1868) (Bovill, J.). The key role of Coke is made clear in the opinion of one judge who affirms that:

[T]he opinion of Lord Coke, who clearly considered the law to be that women were disqualified at common law, would under any circumstances be of great authority: but, when it is supported by centuries of usage quite in accordance with his statement, the authority becomes such as it would be impossible for this Court to disregard. Id. at 396 (Keating, J.) (citation omitted).

35 De Souza, 1 Q.B. at 691.
36 11 M. 784 (1873).
37 Id. at 832.
38 SACHS & WILSON, supra note 33, at 44.
39 Id. at 171-72.
said that they do not feel themselves at liberty to accept the notice of any woman. 40 That same year, ninety-two women signed a petition requesting admission to the law lectures at Lincoln’s Inn. They were told “that in the opinion of this Bench it is not expedient that Women should be admitted to the Lectures of the Professors appointed by the Council of Legal Education.” 41

In the midst of these pronoun controversies and inexpedient requests, the young lawyer Rider Haggard penned one of the most popular novels of his day—an imperial adventure story about an unprecedented ruling queen and judge who is unambiguously “She.” 42

II. SHE-WHO-MUST-BE-OBEYED: QUEEN OF THE IMAGINATION

The novel She is the story of three Englishmen who penetrate into the depths of a feminized African landscape and discover an all-powerful queen, She-Who-Must-Be-Obeyed. 43 The novel consists of a first-person

40 Lady Lawyers, Solicitors’ J., Dec. 20, 1879, at 139. Lawyers in England were (and still are) either solicitors or barristers. In the nineteenth century, a solicitor was literally, as Birks describes him in his aptly titled history Gentlemen of the Law, “the practical man of affairs who looks after the day-to-day management of legal business, the man to whom the layman takes his troubles.” Michael Birks, Gentlemen of the Law 3 (1960). Barristers were primarily advocates, with the exclusive right to plead cases in the superior courts. Generally speaking, the services of a barrister were retained by a solicitor rather than by the client directly. To train as a solicitor, one had to be articled to a practicing solicitor, serve an apprenticeship (typically for five years), and pass examinations administered by the Law Society. Id. at 2–3. While dated, Birks’ book provides a thorough and fascinating history of the “character” of the solicitor.

41 5 THE BLACK BOOKS: THE RECORDS OF THE HONORABLE SOCIETY OF LINCOLN’S INN 178 (Sir Ronald Roxburgh ed., Lincoln’s Inn 1968) (1845–1914). Barristers (as opposed to solicitors) are “called to the Bar.” Richard L. Abel, The Legal Profession in England and Wales 38 (1988). After being admitted to one of the four Inns of Court (Gray’s Inn, Lincoln’s Inn, the Inner Temple, or the Middle Temple), a law student had to “keep terms,” evidenced by his dining in the hall of his Inn a specified number of times. For three years, graduates of English universities were required to dine twelve times each year, and all other would-be barristers were required to dine twenty-four times each year. This represented a significant expense, especially for those who had to travel to London. Id. Since 1872, students have also been required to pass a Bar examination. Law lectures were given by the Council of Legal Education (established by the four Inns in 1852), although many students engaged the services of private “crammers.” Id. at 50. Judges were called from the ranks of barristers. Birks, supra note 40, at 2.

42 The novel She sold a nearly record-breaking 30,000 copies within a few months. Sandra M. Gilbert, Rider Haggard’s Heart of Darkness, in CoordinateS: Placing Science Fiction and Fantasy 124 (George E. Slusser et al. eds., 1983). Gilbert contends the terse title suggests that the book might be “an abstract treatise on the female gender or a fictive exploration of the nature of womanhood.” Id.

43 H. Rider Haggard, She 56 (Daniel Karlin ed., Oxford Univ. Press 1991) (1887). As they make their way into the interior of the continent, the narrator Holly erotically describes the climax of an African evening:

The moon went slowly down in chastened loveliness, she departed like some sweet bride into her chamber, and long veil-like shadows crept up the sky through which the stars peeped shyly out. Soon, however, they too began to pale before the splendour in the east, and then the quivering footsteps of dawn came rushing
manuscript of one of these travelers, Ludwig Horace Holly, which is presented to the reader by an anonymous editor as a "record," or testimony concerning "one of the most wonderful and mysterious experiences ever undergone by mortal men." The editor counsels the reader in jury-like fashion "to form his own judgment on the facts before him." Before their journey, the three travelers live together in a university setting, an all-male family in an almost exclusively masculine world. In light of the novel's title, however, it is not surprising that the opening remarks about each character set forth his feelings about women.

Holly, a Cambridge scholar in his forties, has steered away from women since he fell in love at the age of twenty. The woman rejected him, saying as she stood with him in front of a mirror, "'Now if I am Beauty, who are you?'" The editor of the manuscript corroborates both this appraisal of Holly's appearance ("he reminded me forcibly of a gorilla"), as well as Holly's anxious aversion to women ("he was popularly supposed to be as much afraid of a woman as most people are of a mad dog"). Holly identifies himself as "a bit of a misogynist."

The second Englishman, Leo Vincey, has become the Beauty in Holly's life. Holly was appointed Leo's guardian when the boy was five years old, and he raised him without any female assistance: "I would have no woman to lord it over me about the child, and steal his affections from me." The editor describes Leo as "a statue of Apollo come to life," and Holly comments that "Beauty and the Beast was what they called us when we went out walking together, as we used to do every day." Holly doesn't seem to mind these epithets when he is the Beast beside Leo, possibly because he feels so secure about the relationship: "Few sons have been loved as I love Leo, and few fathers know the deep and continuous affection that Leo bears to me." Leo, however, is not a

across the newborn blue, and shook the planets from their places.

Id. Gilbert describes the men's penetration of Africa as follows: "Lifted into litters, the explorers yield to a 'pleasant swaying motion' and, in a symbolic return to the womb, they are carried up ancient swampy birth-canals into 'a vast cup of earth' that is ruled by She-Who-Must-Be-Obeyed and inhabited by a people called the Amahaggar." Gilbert, supra note 42, at 125.

44 HAGGARD, supra note 43, at 1.
45 Id. at 6.
46 The first lectures at Cambridge given specifically for women were in 1870, and soon thereafter women began to be admitted to some of the "men's" lectures. Women were not granted degrees from Cambridge until 1948. St. John-Stevas, supra note 9, at 269-70.
47 HAGGARD, supra note 43, at 8.
48 Id. at 2.
49 Id. at 88.
50 Id. at 19.
51 Id. at 1.
52 Id. at 21.
53 Id. at 20.
misogynist, and Holly reports having “trouble” with Leo when it comes to young women.54

The third Englishman, Job, is “the suitable male attendant” whom Holly had hired to help him care for Leo.55 One of a family of seventeen, Job is described as “well-acquainted to the ways of children.”56 A comic figure, this feminized character displays the fears and concerns of an overbearing mother and the moral prudishness of a stereotypical spinster aunt.

Leo is called to the Bar “to pass the time away” until he turns twenty-five.57 It is on that birthday that he becomes entitled to his inheritance, an old chest containing an ancient potsherd (a broken piece of earthenware) covered in Uncial Greek writing.58 The chest also includes a sixteenth-century Latin translation of the potsherd, as well as an English translation made by Leo’s father. Upon learning from these ancient writings that a purported source of eternal youth and beauty is to be found in a land ruled by She-Who-Must-Be-Obeyed, a queen “having knowledge of all things, and life and loveliness that does not die,”59 these three unlikely adventurers travel to Africa in search of the “rolling Pillar of Life.”60

In her article Rider Haggard’s Heart of Darkness, Sandra Gilbert makes much of the fact that the Amahaggar society described in She is matriarchal.61 As Holly explains:

[W]omen among the Amahaggar are not only upon terms of perfect equality with the men, but are not held to them by any binding ties. Descent is traced only through the line of the mother, and while individuals are as proud of a long and superior female ancestry as we are of our families in Europe, they

54 Id. at 22.
55 Id. at 19.
56 Id.
57 Id. at 22. That it was no trouble for a mediocre male scholar (like Leo) or one with little real interest in the profession (like Haggard) to be called to the Bar accentuates the injustice of the barriers that kept even the most zealous women from making it into the club. Encouraged by his friend Justice Kotze who asked him, “Why not read for the Bar?,” Haggard embarked on such a course in 1881 as a member of Lincoln’s Inn. RIDER HAGGARD, 1 THE DAYS OF My LIFE 173, 203 (1926). He was admitted to the Bar in 1885, but by 1888 he had given up the practice of law. NORMAN ETHERINGTON, RIDER HAGGARD 7-9 (1984). His biographer Morton Cohen explains: “Rider Haggard was not destined to serve the law long. His whimsical strain made him unsuited for chambers and the routine of legal affairs.” MORTON N. COHEN, RIDER HAGGARD: His LIFE AND WORKS 85 (1960).
58 Daniel Karlin, Explanatory Notes to H. Rider Haggard, She 318, 320 (Daniel Karlin ed., Oxford Univ. Press 1991) (1887). In his notes on the text of She, Karlin defines Uncial Greek as “a script comprising large rounded letters (not joined to each other) characteristic of early classical manuscripts.” Id.
60 Id. at 31.
61 Gilbert, supra note 42, at 126.
never pay attention to, or even acknowledge, any man as their father, even when their male parentage is perfectly well known.\textsuperscript{62}

Gilbert sees this land as a place where "relations between its men and women inhabitants are exactly antithetical to those that prevail in normal civilized societies" and thus "a realm where what patriarchal culture defines as misrule has become rule."\textsuperscript{63} Specifically, she describes an early episode in which the Englishmen's Arab companion, Mahomed, almost falls victim to the customary Amahaggar mode of execution (placing a red-hot earthen pot on the heads of strangers) as "grotesquely sexual in its elaboration of the ways in which female misrule can cause a vessel associated with female domesticity to become as deadly as female anatomy."\textsuperscript{64}

A cross-examination of Holly's testimony concerning women's roles in this society, however, reveals that, in reality, the women do not rule, and that Holly's claim of equality between Amahaggar men and women simply is not substantiated by the facts. Each tribe of about seven thousand people is governed by an elected ruler known as a Father and, as Holly clarifies, there "is but one titular male parent of each tribe."\textsuperscript{65} In Haggard's fantasy, the language is unambiguous—women cannot be Fathers. As the Amahaggars have no written laws, this rule (like the common law) is based on custom; however, there is little chance that this established precedent will be challenged, for anyone who offends against custom will be "put to death by order of the Father"—thus ensuring uninterrupted acquiescence in the law.\textsuperscript{66}

Men are also the only armed members of the society, and in almost every description of an Amahaggar man, he either is holding his spear or has it nearby. Moreover, the men use these weapons to "control" the women. Billali, one of the Amahaggar Fathers, describes the position of women as follows: "We worship them ... up to a certain point, till at last they get unbearable, which," he added, "they do about every second generation."\textsuperscript{67} At this point, he explains, "we rise, and kill the old ones as an example to the young ones, and to show them that we are the

\textsuperscript{62} Haggard, supra note 43, at 81.
\textsuperscript{63} Gilbert, supra note 42, at 126.
\textsuperscript{64} Id. As Gilbert explains, "[t]his astonishing mode of execution, a cross between cooking and decapitation which seems to have no real anthropological precedent, is such a vivid enactment of both castration fears and birth anxieties that it is hardly necessary to rehearse all its psychosymbolic overtones." Id. Laura Chrisman argues that this matrilinear society, which emphasizes a woman's reproductive role and excludes her from the processes of production (women are exempt from manual labor), limits her to a domestic function. Laura Chrisman, The imperial unconscious? Representations of imperial discourse, 32 Critical Q. 38, 43 (1990).
\textsuperscript{65} Haggard, supra note 43, at 81 (emphasis added).
\textsuperscript{66} Id. at 90.
\textsuperscript{67} Id. at 114.
strongest.’”68 While women in Britain also were “dying” (or at least suffering) on their pedestals, the Amahaggar women more literally suffered their fate of being “worshipped,” while remaining powerless.69

Not surprisingly, in this world of male fantasy, the only power we see an Amahaggar woman exercising is the ability to make sexual advances to the man of her choice. Leo, for example, is embraced almost immediately by the beautiful Ustane, and while the moral and prudish Job “ejaculated, ‘The hussy—well, I never!’”, Leo warmly returns Ustane’s embrace.70 According to Amahaggar custom, this exchange is akin to a marriage ceremony, although the arrangement continues only until one of the partners wearies of it. While these women do maintain some control over their private lives, their actual power appears to be mere fancy.

The Queen of the Amahaggars, however, as Queen Victoria was described in the Jex-Blake case, is an “illustrious and solitary exception” to this power structure.71 While the men rise up and kill other older women, the two thousand-year-old She, or Ayesha (her real name and what she prefers to be called by Holly), has ruled over Amahaggar men and women for generations. In fact, she shares much in common with Britain’s real “Great White Queen” Victoria.72

Queen Victoria similarly was “above the law” in that she was exempt from the rules of coverture. As the monarch, Victoria was unique among married women. She was not obliged to take her husband’s name or to hand over her property to him after their marriage; she could enter into independent contracts and dispose freely of her own possessions.73 While Victoria did not support the efforts of nineteenth-century women to re-

68 Id.
69 Florence Nightingale in Cassandra laments the mental and physical suffering women endure as a result of their confinement within the domestic sphere. Florence Nightingale, Cassandra, in CASSANDRA AND OTHER SELECTIONS FROM SUGGESTIONS FOR THOUGHT 228 (Mary Poovey ed., 1992) (1852). Far from celebrating women’s role as angel in the house, Nightingale describes the plight of Victorian upper- and middle-class women as:

[L]ike the Archangel Michael as he stands upon Saint Angelo in Rome. She has an immense provision of wings, which seem as if they would bear her over heaven and earth; but when she tries to use them, she is petrified into stone, her feet are grown into the earth, chained to the bronze pedestal.

Id.
70 HAGGARD, supra note 43, at 81.
71 Jex-Blake v. Senatus, 11 M. 784, 832 (1873).
72 Neil Parsons explains that the “term ‘Great White Queen’ as applied to Queen Victoria (ruled 1837–1901) was put into the mouths of ‘native’ applicants by British settler records around the world and came to be accepted in metropolitan Britain as correct ‘Sambo’ pidgin.” NEIL PARSONS, KING KHAMA, EMPEROR JOE, AND THE GREAT WHITE QUEEN: VICTORIAN BRITAIN THROUGH AFRICAN EYES, at xvii (1998).
form the laws of coverture, she maintained an identity, including a legal one, of her own.\textsuperscript{74}

In what Adrienne Munich identifies as “a revealing fantasy of Haggard who had never known another monarch than Victoria and who was only six years old when Prince Albert died,” both Ayesha and Victoria enjoy very long reigns and suffer extensive periods of mourning for their male lovers.\textsuperscript{75} Also, Ayesha tells Holly that her “empire is of the imagination,” which seems an apt description of the immense symbolic power Victoria wielded, especially in connection with her empire.\textsuperscript{76} As Dorothy Thompson explains:

Disraeli’s move in creating the title of Empress of India for the queen in 1876, and the celebrations of her golden jubilee in 1887 and diamond jubilee a decade later, meant that there was a grand royal event in each of the last three decades of the century—events which highlight the growing imperial power of Britain.\textsuperscript{77}

Moreover, a diary entry of one of her granddaughter’s friends provides a glimpse of the personal hold Victoria had on the country’s imagination. Visiting Windsor Castle and seeing the light of the Queen’s lamp “glowing late into the night,” Helene Vacaresco wrote that thinking of that “frail little old lady working there and holding in her hands the threads of ... her vast Empire” filled her “with something like awe.”\textsuperscript{78} Victoria’s “awesome” symbolic power, however, exceeded the realm of the imaginary: “[B]y the time of her death, the need of a figure on which to focus the idea of Britain had become so deeply part of the political scene that even republican political leaders feared to challenge it.”\textsuperscript{79} For the sake of Empire, the political nature of the Queen’s very public role had to be acknowledged.\textsuperscript{80}

\textsuperscript{74} In fact, the Queen expressed anti-feminist sentiments such as “[w]e women are not \emph{made} for governing—and if we are good women, we must \emph{dislike} these masculine occupations.” \textsc{Richard Mullen \& James Munson, Victoria: Portrait of a Queen} 60 (1987). Regardless of what she said, however, she was very active in government. Sir Charles Dilke, a republican detractor of Queen Victoria, complained in 1879, “The Queen \emph{does} interfere ... constantly.” \textsc{Thompson, supra} note 73, at 121. Thompson explains the Queen’s political role as follows: “To the end of her life she took an active interest in all matters of state, demanded to be consulted and undoubtedly influenced many decisions.” \textit{Id.} at 122.

\textsuperscript{75} Adrienne Auslander Munich, \textit{Queen Victoria, Empire, and Excess}, 6 \textsc{Tulsa Stud. in Women’s Lit.} 265, 272 (1987).

\textsuperscript{76} \textsc{Haggard, supra} note 42, at 175.

\textsuperscript{77} \textsc{Thompson, supra} note 73, at 117.

\textsuperscript{78} \textsc{Mullen \& Munson, supra} note 74, at 136 (Helene Vacaresco’s comment is quoted in Mullen \& Munson, but they do not cite the original source).

\textsuperscript{79} \textsc{Thompson, supra} note 73, at 125.

\textsuperscript{80} Thompson comments that “the presence of a female in the highest political position in the country had at times given strength, if only by implication, to the arguments of her
In the novel, when Holly first comes into Ayesha's presence, he is filled with a nameless terror when he feels "the gaze of the unknown being seeking through and through me" from behind a curtain.\(^{81}\) When he turns his gaze upon her, he finds himself linguistically impotent:

I have heard of the beauty of celestial beings, now I saw it; only this beauty, with all its awful loveliness and purity, was evil—at least, at the time, it struck me as evil. How am I to describe it? I cannot—simply, I cannot! The man does not live whose pen could convey a sense of what I saw.\(^{82}\)

In its ambiguity, this is typical of almost all of Holly's descriptions of Ayesha. He tries to capture the multiplicity of meanings that she implies, but language fails him. He describes her in contradictory terms or qualifies his assessments as he does with the afterthought, "at least, at the time, it struck me as evil."\(^{83}\) His reference to "at the time" emphasizes the fact that he is remembering. So has he changed his mind, deciding that she is not evil? It is as if he wants to emphasize his own trouble in coming to terms with the powerful woman that She is and the possibilities that She represents.

After Holly has spent hours discussing classical languages and history with a charming, witty, and flirtatious Ayesha, she gives a little sob when she is reminded of Kallikrates, the man she had loved and murdered two thousand years ago in a jealous rage and for whose return she has been waiting since that time. Holly comments, "I saw that after all she was only a woman, although she might be a very old one."\(^{84}\) When she is only a woman, acting in an acceptable, womanly way, he is no longer terrified.

His assessment of her changes, however, when he sees her the next day, not as a languishing beauty, but as a powerful woman presiding over a court of law. He is commanded to appear in her courtroom, and there witnesses a sight "as strange as any I ever saw, even in that unholy land."\(^{85}\) As he stands near the back of the room, taking in the crowd of gloomy-looking spectators, there is a cry of "Hiya! Hiya!"\(^{86}\) (meaning She! She!), which may have sounded to Holly reminiscent of, but profoundly different from, the familiar call to order, "Hear ye!, Hear ye!" The crowd then immediately falls upon the ground in a degrading inver-

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\(^{81}\) HAGGARD, supra note 43, at 141.

\(^{82}\) Id. at 155.

\(^{83}\) Id.

\(^{84}\) Id. at 157 (emphasis added).

\(^{85}\) Id. at 173.

\(^{86}\) Id. at 170.
sion of "all rise." Ayesha enters the courtroom following a long procession of guards and male and female mutes, and then tells Holly to come sit at her feet and see her do justice.

What follows is a formal court proceeding. The prisoners are summoned; Ayesha asks Holly to identify the men who attacked him and his companions and then has him testify concerning the attempted murders. Holly recounts "the history of the cannibal feast, and of the attempted torture of our poor servant [Mahomed]." When he finishes, Ayesha calls upon Billali to verify Holly's testimony. After the case for the prosecution has been presented, Ayesha asks if any of the accused would like to speak in their own defense. One man asks for mercy, explaining that the attack had been made in a sudden fury and that they deeply regretted their actions.

An intense silence follows this plea, and Holly is struck by the strangeness of this entire scene. He finds Ayesha particularly remarkable:

Then, seated in her barbaric chair above them all, with myself at her feet, was the veiled white woman, whose loveliness and awesome power seemed to visibly shine about her like a halo, or rather like the glow from some unseen light. Never have I seen her veiled shape look more terrible than it did in that space, while she gathered herself up for vengeance.

Many spectacular scenes in the novel horrify Holly. He witnesses Ayesha ritually cursing the long-dead Egyptian wife of Kallikrates, causing a white flame of fire to leap up and down with the movements of her body. He sees her caressing a two thousand-year-old corpse, and later actually bathing in the fire of the Pillar of Life. But it is in a court of law, where "She" sits in judgment, that Holly finds Ayesha most terrifying. Ironically, it is in that same space that Ayesha appears to stand in for "civilized" white society, in contradistinction to the cannibalistic and savage Amahaggars. This scene emphasizes Ayesha's whiteness. In fact, swathed as she is from head to foot, whiteness is her only identifiable
Ayesha’s pose is thoughtful and reflective, while the multitude before her are described as groveling upon their stomachs. In this formal legal proceeding, with evidence given and corroborated and the defendants given an opportunity to speak, the chaos of the earlier scene governed by Amahaggar custom (the attempted hot-potting and following mayhem) is disciplined.

While Ayesha’s judgment is harsh (the men are condemned to death), this outcome should not be all that troubling to Holly, who describes the defendants as “would-be murderers” and considers them responsible for the death of Mahomed. Also, while it is true that the men will be tortured, Holly has emphasized their attempted torture of Mahomed in his own testimony. In fact, while Holly professes to make a plea for mercy for the prisoners, his narrative suggests that he takes more interest in the particular fall of Ayesha’s Greek accent than the plight of the “knots of evil-doers.” Soon after the prisoners are taken away, he joins Ayesha on a sightseeing tour of the caves of Kôr. So what is it that made her so terrible to Holly in that space?

An analysis of Holly’s narrative suggests that his horror of Ayesha in the courtroom has nothing to do with the fate of the Amahaggars and everything to do with her position “above them all.” From the time of Holly’s first acquaintance with Ayesha, he has refused to bow to her authority. He is indignant when Billali tells him that he must crawl on his hands and knees when in her presence: “I was an Englishman, and why, I asked myself, should I creep into the presence of some savage woman . . . ? If once I began to creep upon my knees I should always have to do so, and it would be patent acknowledgement of inferiority.” As an Englishman, he is confident of his superiority to both Billali, who does creep, and to the “savage dusky queen.” Similarly, in the courtroom scene, when Ayesha enters and everyone falls to the ground, Holly recounts that he was left standing “like some solitary survivor of a massacre.”

Thus, when this white woman sits as judge, the seat of judgment becomes barbaric and Holly cannot emphasize enough (he tells us three times in the course of this short narrative) that he sat “at her feet.” Unlike the scenes in which Ayesha unveils for Holly, when all of her power is sexual, her power in the courtroom is of a very different nature. Al-

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93 This point is emphasized in the illustration that accompanied early editions of the text in which Ayesha is mummy-like in appearance. See H. RIDER HAGGARD, SHE: A HISTORY OF ADVENTURE 170–71 (Longmans 1919) (1887).
94 HAGGARD, supra note 43, at 142.
95 Id. at 173.
96 Id. at 140.
97 Id. at 138. The associations in the novel between savagery and dark skin are emphasized in that Holly no longer refers to Ayesha as savage once he realizes that she is not dusky.
98 Id. at 171.
99 Id. at 174.
though her garb is a bit peculiar, she too closely resembles those “shes” seeking power in law and society back in England for her position above Holly to be regarded as anything short of terrible.

A reading which focuses only on issues of women and power in this novel, however, would fail to examine what Laura Chrisman describes as “the multiple dynamics within the text, of gender, ‘race,’ and a variety of social science discourses, whose intersections are overdetermined by the dictates of a highly problematic imperialism.” Edward Said, describing imperialist “structures of attitude and reference,” notes the widespread (virtually unanimous, Said argues) nineteenth-century beliefs inherent in cultural discourse that “subject races should be ruled, that they are subject races, that one race deserves and has consistently earned the right to be considered the race whose main mission is to expand beyond its own domain.” In this context, it is important to explore the meanings of Ayesha not only in her role as a powerful ruling judge and queen, but more specifically in her role as an imperial and white ruler.

It is clear that Ayesha is white from the first pages of the novel because the letter from Leo’s father that accompanies the ancient potsherd emphasizes this point: “[T]he people there [in the land of the Amahaggars] speak a dialect of Arabic, and are ruled over by a beautiful white woman who is seldom seen by them, but who is reported to have power over all things living and dead.” When Holly first appears before Ayesha, the first thing he sees is “a most beautiful white hand (white as snow).” Her body is wrapped in a soft, white gauzy material and “one could distinctly see the gleam of the pink flesh beneath [these wrappings].” This white queen rules over a people of a different race, a darker race. Holly describes the Amahaggars as too dark, or rather too yellow, to be Arabs. As one critic comments, “the Amahaggar are portrayed as a bastard race, a degenerate survival from the golden age of Kôr.” The travelers learn that Ayesha intervenes to stop wars among the Amahaggar tribes. In this way, the text suggests that, like the colonies of England, the Amahaggar tribes benefit from the rule of their queen.

The confrontation between the imperial She and the Amahaggar Ustane provides a rich context in which to explore the complex dynamics of gender, race, and imperialism in the text. When Ayesha hears of the attachment between Ustane and Leo (who Ayesha believes is the reincarnation of her long lost love Kallikrates), she announces that Ustane must

100 Chrisman, supra note 64, at 42.
102 HAGGARD, supra note 43, at 28.
103 Id. at 142.
104 Id.
106 HAGGARD, supra note 43, at 91.
die: "‘No other woman shall dwell in my Lord’s thoughts; my empire shall be all my own.’"107 Holly, however, persuades Ayesha to spare Ustane’s life. When Ustane explains to Ayesha that Leo is her husband, "‘I took him according to the custom of our country,’” Ayesha responds that Ustane has done evil; she has married a man not of her own race, which invalidates the custom.108 As the Amahaggars are a bastardized race, there clearly is no truth to this statement. It is yet another example of a made-up rule.

And like Alice, Ustane defies authority and refuses to leave, boldly daring Ayesha, "‘[d]estroy me, then, if thou hast the power!’"109 In a rage, Ayesha strikes Ustane on the head, leaving three finger-marks across her bronze tresses that are "white as snow."110 Holly staggers back in horror, and the marks strike terror in Ustane’s heart: “Utterly awed and broken down, the poor creature rose, and, marked with that awful mark, crept from the room sobbing bitterly.”111 While this scene may be read as two women fighting over a man, the emphasis on customs and rights in their exchange suggests that much more is at stake. Ustane is standing up for the integrity of her customs; moreover, she is refusing to let Ayesha deny her the only power that she has been granted as a woman in her society—the power to choose a husband. But the “civilized” Ayesha has no respect for “savage” ways, and when an Amahaggar stands up for her customs and rights, this imperial queen blasts her into submission with a fierce display of white power. A few pages later, when Ustane returns again to claim Leo, Ayesha murders her in cold blood.112

While Ustane is presented heroically in this imperial romance, the way the Englishmen so easily accept her death is simply shocking. Leo and Holly witness the murder, and while Leo immediately springs at Ayesha in a rage, moments later, “with the corpse of his dead love [Ustane] for an altar, did Leo Vincey plight his troth to her red-handed murdrress—plight it for ever and a day.”113 That evening, racked with remorse over Ustane’s murder, Leo admits an insatiable desire for Ayesha, and Holly comments that Leo, despite his shame and grief, would have been mad “to entertain the idea of running away from his extraordinary fortune” in being the object of Ayesha’s devotion.114 In his article Victorians and Africans: The Genealogy of the Myth of the Dark Continent, Patrick Brantlinger discusses late nineteenth-century scientific justifications of-

107 Id. at 202.
108 Id. at 205.
109 Id. at 206.
110 Id.
111 Id. at 207.
112 Id. at 127.
113 Id. at 230.
114 Id. at 243. The term “fortune” emphasizes the imperial nature of Leo and Holly’s quest; they have come to Africa in search of whatever of value they might acquire (power, knowledge, eternal youth).
ferred by eugenicists and social Darwinists, not only for imperialism, but also for genocide. Arguing that these two ideas were inseparable, Brantlinger comments that “whereas imperialism could be lavishly praised in public, open support for the liquidation of ‘inferior’ races was another matter.” In the novel, Ustane’s murder represents this unspeakable side of imperialism, and a troubling footnote that Holly adds to his manuscript, months after he has completed it, enacts the justifications of genocide that were the subtext of the social discourse of Empire.

In Holly’s manuscript, after recounting Ustane’s murder and describing Ayesha as “a mysterious creature of evil tendencies,” Holly adds:

After some months of consideration of this statement I am bound to confess that I am not quite satisfied of its truth. It is perfectly true that Ayesha committed a murder, but I shrewdly suspect that, were we endowed with the same absolute power, and if we had the same tremendous interest at stake, we should be very apt to do likewise in parallel circumstances.

Ayesha’s tremendous interest was her empire, both Kallikrates (“my empire shall be all my own”) and her African empire. Months later back in England, far removed from the dead body of Ustane, Holly recharacterizes Ayesha as justified (she had so much at stake) rather than evil. Edward Said sees in British literature:

[A] consistency of concern . . . that fixes socially desirable, empowered space in metropolitan England or Europe and connects it by design, motive, and developments to distant or peripheral worlds (Ireland, Venice, Africa, Jamaica), conceived of as desirable but subordinate. And with these meticulously maintained references come attitudes—about rule, control, profit and enhancement and suitability . . .

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115 Patrick Brantlinger, Victorians and Africans: The Genealogy of the Myth of the Dark Continent, in “RACE,” WRITING, AND DIFFERENCE 185, 205 (Henry Louis Gates ed., 1986). To support this argument, Brantlinger cites Benjamin Kidd’s 1894 Social Evolution: “The Anglo-Saxon has exterminated the less developed peoples with which he has come into competition . . . through the operations of laws not less deadly [than war] and even more certain in their result. The weaker races disappear before the stronger through the effects of mere contact.” BENJAMIN KIDD, SOCIAL EVOLUTION 46 (1894). Brantlinger also analyzes Darwin’s 1874 The Descent of Man, concluding that “Darwinism lent scientific status to the view that there were higher and lower races, progressive and nonprogressive ones, and that the lower races ought to be governed by—or even completely supplanted by—civilized, progressive races like the British.” Brantlinger, supra at 206.

117 Id. at 202.
118 SAID, supra note 101, at 52.
One wonders what structures of attitude and reference become culturally encoded when murders of "subject races" are so readily excused in the name of the tremendous interest of empire.\textsuperscript{119}

Near the end of the novel, Ayesha says that they must travel to England to "'live as it becometh us to live.'"\textsuperscript{120} They shall overthrow Queen Victoria and destroy any tyrants who will stand in the way of Kallikrates' (and her own) rule. Holly informs her that "in England 'blasting' was not an amusement that could be indulged in with impunity, and that any such attempt would meet with the consideration of the law and probably end upon a scaffold."\textsuperscript{121} She responds, laughing with scorn, "'The law . . . the law! Canst thou not understand, oh Holly, that I am above the law, and so shall my Kallikrates be also?'"\textsuperscript{122}

While confessing that it made him "absolutely shudder to think what would be the result of her arrival there [in England]," Holly ultimately concludes that an all-powerful British Empire would be worth the great cost, including, it seems, the "terrible sacrifice of life" that the text has rehearsed in Ayesha's blasting of Ustane:

In the end she would, I had little doubt, assume absolute rule over the British dominions, and probably over the whole earth, and, though I was sure that she would speedily make ours the most glorious and prosperous empire that the world has ever seen, it would be at the cost of a terrible sacrifice of life . . . .

What was the meaning of it all? After much thinking I could only conclude that this wonderful creature . . . was now about to be used by Providence as a means to change the order of the world, and possibly, by the building up of a power that could no more be rebelled against or questioned than the decrees of Fate, to change it materially for the better.\textsuperscript{123}

But while Holly's (Britain's) unbridled lust for power may be acceptable (the desire to make "ours the most glorious and prosperous empire that the world has ever seen"), an all-powerful She is not.\textsuperscript{124} As Gilbert explains, Ayesha had to be destroyed by the Pillar of Life, the "fiery signifier whose eternal thundering return speaks the inexorability of the patriarchal Law She has violated in her satanically overreaching ambition."\textsuperscript{125} As figuratively played out in the courtroom scene, where

\textsuperscript{119} See generally Wendy R. Katz, Rider Haggard and the Fiction of Empire 131-54 (1987) (discussing the racism in She and other imperial fiction by Haggard).
\textsuperscript{120} Haggard, supra note 43, at 254.
\textsuperscript{121} Id. at 255.
\textsuperscript{122} Id.
\textsuperscript{123} Id. at 256.
\textsuperscript{124} Id. (emphasis added).
\textsuperscript{125} Gilbert, supra note 42, at 130.
He sat "above them all," Ayesha's opposition to "the eternal [patriarchal] Law" had to be foreclosed.\textsuperscript{126} Even in the context of Empire, She was too much of an exception. And with Ayesha's devolution at the end of the novel from "the loveliest, noblest, most splendid woman the world has ever seen"\textsuperscript{127} into literally a "hideous little monkey frame,"\textsuperscript{128} the text spectacularly clarifies that ultimately, "She" is not a "person."

III. MARY SLESSOR: WHITE QUEEN OF THE OKOYONG

It seems a sudden shift from a raven-haired beauty with serpent-like grace, sharing fruit and conversation with an English gentleman, to a red-headed missionary making her way barefoot through the African bush; from the imaginary land of imperial Kôr and the Amahaggars to the real world of imperial England and the Okoyong; from the pages of an eroticized imperial romance to accounts of the life of a missionary and magistrate. However, the fictional Ayesha and the real-life Mary Slessor both ruled in Africa as "white queens" and judges. Their positions were in flagrant violation of the rules about women in public, political, and legal roles that were so vehemently defended and enforced back in Britain. Representations of Slessor, like those of Ayesha and other exceptional "shes," were overdetermined and inherently contradictory. A cross-examination of the accounts of Slessor's real-life experiences, especially in her capacity as an appointed magistrate of the British government, brings to light compelling additional testimony concerning women, law, and power in the late nineteenth century.

In 1876, Slessor sailed from Scotland, leaving behind a childhood clouded by extreme poverty and violence, to become a missionary in the Calabar region of Eastern Nigeria. It had been a dream of Slessor's mother that one of her sons be a missionary in Africa, but when all of her sons died, she supported Mary's desire to follow in the footsteps of Dr. David Livingstone, hero to both mother and daughter. After serving for twelve years in the base missionaries in Duke Town, Old Town, and Creek Town, Slessor was transferred inland, at her request, to live with the Okoyong. It took more than two years for her to persuade the mission officials to let her live with the Okoyong tribe, where it was rumored that "old customs when women were flogged to death for trivial offenses, branded with smouldering sticks like cattle, and dragged screaming to be buried with a chief" still prevailed.\textsuperscript{129} Slessor's friends were "horrified" and tried to dissuade her from going, as did a group of traders who

\begin{footnotesize}
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\item \textsuperscript{126} \textit{Haggard}, \textit{supra} note 43, at 295.
\item \textsuperscript{127} \textit{Id.} at 294.
\item \textsuperscript{128} \textit{Id.} at 295.
\item \textsuperscript{129} \textit{Buchan}, \textit{supra} note 15, at 82.
\end{itemize}
\end{footnotesize}
claimed the Okoyong were more in need of a gun-boat than a missionary.130

All such reports must be read within the context of the imperialist structures of attitude and reference that informed them, and with the understanding that with no writing back from the Okoyong, we have only one-sided accounts. While we cannot assess the actual threat to Slessor’s safety, if any, posed by the Okoyong, we do know that Slessor’s move—a woman going alone to live with an African tribe—was unprecedented.

Slessor lived with the Okoyong from 1888 to 1902.131 During that time, she gained a reputation that was legendary in the Calabar region, and her fame soon spread to Britain. Mary Kingsley, who made a special trip to meet Mary Slessor, wrote the following about Slessor in her 1897 travel narrative, Travels in West Africa:

Her great abilities, both physical and intellectual, have given her among the savage tribe an unique position, and won her, from white and black who know her, a profound esteem. Her knowledge of the native, his language, his ways of thought, his diseases, his difficulties, and all that is his, is extraordinary, and the amount of good she has done, no man can fully estimate.132

While many tales of Slessor and the Okoyong circulated, I would like to focus on two particular narratives: the first is an account of Slessor in her position as Her Majesty’s Vice-Consul and District Magistrate; the second comes from Kingsley’s Travels in West Africa.133 In 1890, Sir Claude Macdonald was appointed Her Majesty’s Special Commissioner and Consul-General and, in an effort to expand the authority of the British government in the Calabar region, he began to appoint Vice-Consuls to supervise native courts. Because of her knowledge of the customs and laws of the Okoyong, Macdonald sought to appoint Slessor as Vice-Consul and District Magistrate. This was not a popular decision. Slessor’s missionary colleagues criticized her for being so involved with government affairs; moreover, Caroline Oliver remarks that her colleagues “were shocked at her involving herself in anything so heathen and some-

130 Id. at 87.
131 In 1902, Slessor moved further inland to Enyong Creek. She accepted an appointment in 1905 as a Member of the Itu Native Court with the status of permanent vice-president. She received forty-eight pounds per annum for her services. W.P. LIVINGSTONE, MARY SLESSOR OF CALABAR: PIONEER MISSIONARY 236 (8th ed. 1917).
133 Most of these tales are compiled in Livingstone’s biography of Slessor. He includes information from her correspondence, from the correspondence of government officials and other missionaries, as well as articles published in the Mission Record. In 1915, Livingstone compiled a collection of her “voluminous correspondence,” which unfortunately was destroyed in World War II. BUCHAN, supra note 15, at viii.
times obscene as native customs."\textsuperscript{134} Some members of the government were not too pleased either. Oliver reports that Sir Clement Hill at the Foreign Office "was outraged at the idea of a woman holding such office \ldots\textsuperscript{135}"

Nevertheless, Slessor was offered and accepted the appointment and presided over the local Okoyong courts within the context of the Doctrine of Repugnancy, which "recognized native law and custom except insofar as they were repugnant to civilised standards of natural law and justice."\textsuperscript{136} A well-known account of Slessor is T.D. Maxwell's description of her presiding over the Okoyong court. He was the Chief Magistrate at Calabar, and was visiting in an official capacity. He relates the following first impression of Slessor:

\begin{quote}
What sort of woman I expected to see I hardly know; certainly not what I did. A little frail old lady with a lace or lace-like shawl over her head and shoulders (that must, I think, have been a concession to a stranger, for I never saw the thing again), swaying herself in a rocking-chair and crooning to a black baby in her arms.\textsuperscript{137}
\end{quote}

Maxwell had traveled to see the first woman in the British Empire to be appointed a magistrate, a lay position which carried an enormous amount of real legal power, especially in the colonies. A woman in her position must have been almost impossible for him to imagine, as he makes clear by his own comment, "[w]hat sort of woman I expected to see I hardly know."\textsuperscript{138} As with Holly's description of Ayesha in the courtroom, he cannot imagine a woman "in that space."\textsuperscript{139}

The rest of Maxwell's description is an attempt to negotiate the cultural paradox of Slessor as magistrate, and to do so he calls on various images of women. In the end, however, these representations do not add up to any coherent picture. At first, he describes her as a "little frail old lady" in a rocker (much like Helene Vacaresco's description of Queen Victoria). This is a very strange description of a woman in her early forties, who, pictures show, had not aged prematurely. He also, however, presents her as a mother figure; she is crooning to a baby in her arms. Later, the queen/mother image conflates as he describes Slessor taking

\begin{footnotes}
\item[134] CAROLINE OLIVER, WESTERN WOMEN IN COLONIAL AFRICA 120 (1982).
\item[135] Id.
\item[136] Id.
\item[137] This description is quoted in LIVINGSTONE, \textit{supra} note 131, at 131. The biography does not cite a source for Maxwell's account, but it does set it out in full.
\item[138] Id.
\item[139] HAGGARD, \textit{supra} note 43, at 174.
\end{footnotes}
her position at the front of the court, "surrounded by several ladies and babies-in-waiting."  

Then the description abruptly shifts; there is a change in both the tone of the passage and in the presentation of Slessor. Maxwell reports as follows:

Suddenly she jumped up with an angry growl: her shawl fell off, the baby was hurriedly transferred to some one [sic] qualified to hold it, and with a few trenchant words she made for the door where a hulking, overdressed native stood. In a moment she seized him by the scruff of the neck, boxed his ears, and hustled him out into the yard...  

This is the same "little frail old lady" he was describing only a few sentences before; now she is manhandling a hulking "local monarch of sorts." It is as if Maxwell suddenly remembers that he is describing a Vice-Consul of the British Crown. As such, neither an old woman nor a mother seems appropriate. Instead, he needs to show her as a powerful representative of the British government who is capable of using whatever means necessary to maintain order; she is commended for using violence against one who had "defied her orders."  

But only a few lines later, he again undercuts Slessor's authority by suggesting that her court and her brand of justice are outside the "real" realm of law. Beginning with what sounds like high praise ("I have had a good deal of experience of Nigerian Courts of various kinds, but have never met one which better deserves to be termed a Court of Justice than that over which she presided"), he then comments that the "litigants emphatically got justice—sometimes, perhaps, like Shylock, 'more than they desired'—and it was essential justice unhampered by legal technicalities." Of course, Shylock's justice came at the hands of Portia, suggesting that Maxwell's assessment is influenced by the gender of this particular magistrate. In any event, it is certainly peculiar for a chief magistrate (one who handles appeals) to seem unconcerned that one of the courts under his jurisdiction is "unhampered by legal technicalities." Either the fact that the litigants are members of the Okoyong tribe or that

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140 Livingstone, supra note 131, at 131-32.  
141 Id.  
142 Id.  
143 Id.  
144 Id.  
145 A character in Shakespeare's sixteenth-century play The Merchant of Venice, Portia (dressed as a man) presides as judge over the proceeding to determine whether Shylock could enforce a contractual remedy of a pound of flesh. See Julie Hankey, Victorian Portias: Shakespeare's Borderline Heroine, 45 Shakespeare Q. 426 (1994) (discussing a wide array of Victorian representations of Portia).
the magistrate is a woman (or, most likely, some combination of the two) led him to consider this amazing admission of little consequence.

In many respects, Maxwell seems unable to take Slessor or the business of her court seriously. In another example he provides of one of Slessor's judicial decisions, he portrays her more like a mother resolving a squabble among children than a magistrate settling disputes among litigants:

A sued B for a small debt. B admitted owing the money, and the Court (that is “Ma”) ordered him to pay accordingly: but she added, “A is a rascal. He treats his mother shamefully, he neglects his children, only the other day he beat one of his wives with quite unnecessary vehemence, yes and she was B's sister too, his farm is a disgrace, he seldom washes . . . . On the other hand, B was thrifty and respectable, so before B paid the amount due he would give A a good sound caning in the presence of everybody.”

Unfortunately, we do not know A or B's side of the story or how the “local monarch of sorts” felt about Slessor’s adjudicative style or British justice in general. A cross-examination of Maxwell’s testimony, however, does illuminate that a high-ranking official in the British government viewed the Okoyong people as unruly children, undeserving of names, and as sources of comic relief. Both Slessor and the Okoyong are demeaned by this testimony because, by suggesting that she is not a “real” judge, it implies that the problems of the Okoyong are not of sufficient import to require one. Of course, it is important to acknowledge that A and B, and the local monarch were not given the choice of rejecting all forms of British judgment and authority. Also, apparently uncomfortable designating Slessor as “the Court,” Maxwell inserts the parenthetical “(that is ‘Ma’),” which works to enhance the image of mother and children playing law.

While often referred to as “Ma,” another of Slessor’s familiar titles was the “White Queen of the Okoyong.” Working to both negotiate and obscure the complexity of Slessor’s position (in terms of gender, race, and power), this name was particularly popular among the white men’s clubs in Africa. Much more acceptable as “Ma,” a “pioneer mission-

146 LIVINGSTONE, supra note 131, at 131-32.
147 OLIVER, supra note 134, at 135-36. Buchan reports that the Africans called Slessor “Eka Kpukpro Owo—‘Mother of All The Peoples.’” BUCHAN, supra note 15, at xi. Livingstone also quotes a missionary as saying, “[h]er power is amazing; she is really Queen of the whole Okoyong district.” LIVINGSTONE, supra note 131, at 183. Livingstone refers to Slessor as the White Queen of the Okoyong several times in his biography, and he actually uses that as the title of the children’s biography he wrote about her. W.P. LIVINGSTONE, THE WHITE QUEEN OF OKOYONG: MARY SLESSOR—A TRUE STORY OF ADVENTURE, HEROISM AND FAITH (1916).
ary," or even "a white queen," Slessor's identity as a woman with real legal power was effectively unrepresented.\textsuperscript{148}

As a final comment on Slessor, it is interesting to see what another atypical nineteenth-century woman had to say about her. Mary Kingsley, who traveled through Africa "as a lone she-wolf," provides an account of Slessor that serves in certain respects as a cross-examination of Maxwell's account.\textsuperscript{149} Kingsley is most interested in Slessor's work in saving twin babies, who, she explains, were believed to be evil.\textsuperscript{150} Visiting after Maxwell, she describes the following incident that took place while she was with Slessor:

Miss Slessor had heard of the twins' arrival and had started off, barefooted and bareheaded, at that pace she can go down a bush path. By the time she had gone four miles she met the procession, the [mother] coming to her and all the rest of the village yelling and howling behind her. On the top of her head was the gin-case, into which the children had been stuffed . . . . Needless to say, on arriving Miss Slessor took charge of affairs, relieving the unfortunate, weak, staggering woman from her load and carrying it herself, for no one else would touch it, or anything belonging to those awful twin things . . . .\textsuperscript{151}

In this account, Slessor is no frail woman in a rocker, but a woman able to race more than four miles through a bush path, barefooted, and then take on a heavy load and walk back. Kingsley reports that, on the way home, Slessor waited while the villagers cut a new path to her house because she knew that if she took the twins down the main market road it would never be used again.\textsuperscript{152} While much can be said about Slessor's "interference" with tribal laws and customs, Kingsley's representation does work to discredit any implication in Maxwell's testimony that Slessor does not take the Okoyong people and their beliefs seriously.

Kingsley does not mention that Slessor is a magistrate (however, she also does not mention that she is a missionary). Rather than referring to her as "Ma" or a "white queen," she claims that Slessor "rules" the

\textsuperscript{148} Livingstone's biography is entitled \textit{Mary Slessor of Calabar: Pioneer Missionary}. It was not until Caroline Oliver entitled her chapter on Slessor in her 1982 book, \textit{Western Women in Colonial Africa}, "Mary Slessor: Missionary and Magistrate," that Slessor's position as a magistrate was given any prominence.

\textsuperscript{149} Elspeth Huxley, Introduction to Kingsley, supra note 132, at 5. While Kingsley crosses boundaries that enable her to represent a women with power, her views are steeped in imperialist structures of attitude and reference.

\textsuperscript{150} Buchan provides more specific information on why the twins were killed. Specifically, the Efiks and other Cross River tribes "believed that one twin was the child of a devil which secretly mated the mother, and since it was impossible to tell which was the devil's baby both must die." \textit{Buchan}, supra note 15, at 55.

\textsuperscript{151} \textit{Kingsley}, supra note 132, at 189.

\textsuperscript{152} \textit{Id.} at 189–90.
Okoyong "as a veritable white chief."\textsuperscript{153} While the idea of white superiority is prevalent in Kingsley's account, it is interesting that she represents Slessor in a male role. Kingsley concludes her narrative on Slessor by noting, "[t]his instance of what one white can do would give many important lessons in West Coast administration and development. Only the sort of man Miss Slessor represents is rare."\textsuperscript{154}

In the nineteenth century, figures like Miss Slessor were difficult to represent. The identities available to women were not adequate to represent women in politically powerful positions. In an effort not to diminish what she saw as the importance of Slessor's work and accomplishments, her \textit{real} power, Kingsley apparently decides that the only way to imply the true nature of Slessor's power is to refer to her as a "man."

\section*{IV. WOMEN IN THE LEGAL PROFESSION: "SHE" MAKES IT}

While Slessor was handing out justice a continent away, women in Britain were still trying to get a foot in the door. In 1903, Bertha Cave applied to be called to the Bar of Gray's Inn. When the Benchers of the Inn refused her admission, she appealed their decision. It took a special tribunal (composed of the Lord Chancellor, the Lord Chief Justice, and five other justices) just five minutes to determine that there was no precedent for ladies being called to the English Bar and to aver their unwillingness to establish one.\textsuperscript{155}

In December of 1912, Miss Bebb, after completing her studies at Oxford University, submitted notice to the Law Society of her intention to sit for their February examination, and enclosed the required fee. As had happened in the late 1870s, she was told not to present herself for examination, "giving the reason that she was a woman."\textsuperscript{156} However, much had changed since those earlier petitions. Women in Britain had been actively fighting for greater rights and powers under the law, and in 1913, Bebb's case was championed and supported by several feminist groups.\textsuperscript{157} Bebb brought a lawsuit against the Law Society, asking the

\begin{itemize}
\item \textsuperscript{153} \textit{Id.} at 19.
\item \textsuperscript{154} \textit{Id.} (emphasis added).
\item \textsuperscript{155} \textit{The Law Times}, Dec. 5, 1903, at 107. Cave told the press that she would proceed to seek admission to the rolls as a solicitor and would study for a law degree at the University of London. While the professional bodies only allowed men as members, women were able to earn degrees in law at universities. \textsc{Brian Abel-Smith \& Robert Stevens, Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965}, at 192-93 (1967).
\item \textsuperscript{156} Bebb v. Law Society, 1 Ch. 286 (Eng. C.A. 1914).
\item \textsuperscript{157} See \textsc{Susan Kingsley Kent, Sex and Suffrage in Britain, 1860-1914} (1987), for an excellent study of the feminist movement in the late nineteenth and early twentieth centuries. As Kent argues, "[t]he ultimate source and embodiment of patriarchal power was seen to lie in political expression, or law, and the vote was perceived as a strategic tool for changing law. Thus, the demand for women's enfranchisement was a direct strike at the very seat and symbolic locus of patriarchal power." \textit{Id.} at 13. Bebb's case was another such
court to declare that she was a "person" within the meaning of the 1843 Solicitors' Act, and thus should be allowed to practice law.\textsuperscript{158}

The arguments in this case will sound familiar. Bebb's attorney offered examples of many public offices held by women—Keeper of the Great Seal, Constable of England, Marshal and Great Chamberlain, governor of a workhouse, sexton, churchwarden—and, of course, "there have been Queens of England."\textsuperscript{159} He also offered specific evidence that women, in England in the past, had acted as attorneys.\textsuperscript{160} Finally, he quoted the Solicitors' Act itself, which provided that any "person" complying with specified conditions was entitled to be admitted as a solicitor—Bebb met all of the qualifications and thus, was such a person. The Solicitors' Act even included a provision stating that words importing the masculine gender were to apply to a female unless "there be something in the subject or context repugnant to such construction."\textsuperscript{161}

Arguing that "[e]ver since attorneys have been established as a profession, women have been deemed disqualified to act as attorneys," the defense found it repugnant to construe the statute to include Bebb as a "person."\textsuperscript{162} And, of course, they confidently invoked that popular refrain, "[t]he practice which has been followed for hundreds of years is a conclusive answer to the appellant's claim."\textsuperscript{163}

The Court of Appeals agreed with the defense, citing the unimpeachable Lord Coke as its primary authority: "Lord Coke . . . 300 years ago said that a woman is not allowed to be an attorney . . . . [A]nd the opinion of Lord Coke on the question of what or what is not the common law is one which requires no sanction from anybody else."\textsuperscript{164} In light of this common law tradition, the judge dismissed the examples offered by Bebb's attorney of the many public offices that women had held in the past as "a most interesting discussion as to what women can do" but "beside the mark."\textsuperscript{165} One of the other appellate judges, quoting Chorlton as

\textsuperscript{158} Solicitors' Act, 1843, 6 & 7 Vict., c. 73 (Eng.).
\textsuperscript{159} Bebb, 1 Ch. at 287.
\textsuperscript{160} His examples of women attorneys were from the fourteenth century. The attorney also noted that women were permitted to practice law in many of Britain's colonies, as well as in foreign countries. \textit{Id.} at 289. While he did not offer specific information, it is true that women were lawyers elsewhere. In Canada, Clara Brett Martin was admitted as both a solicitor and a barrister in 1897. Women were allowed to be lawyers in Australia as early as 1903, and Ellen Melville set up practice in New Zealand in 1909. Christine Alice Corcos, \textit{Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession}, 75 DENV. U. L. REV. 307, 323–326 (1998). In the United States, Arabella A. Mansfield was admitted to practice law in Iowa in 1869. Sachs & Wilson, \textit{supra} note 33, at 95. In France, legislation allowing women to enter the legal profession was passed in 1900. Corcos, \textit{supra} at 326–27.
\textsuperscript{161} Solicitors' Act, 1843, 6 & 7 Vict., c. 73, § 48 (Eng.).
\textsuperscript{162} Bebb, 1 Ch. at 290.
\textsuperscript{163} \textit{Id.} at 289.
\textsuperscript{164} \textit{Id.} at 293–94 (Cozens-Hardy, M.R.).
\textsuperscript{165} \textit{Id.} at 294 (Cozens-Hardy, M.R.).
quoted in *Jex-Blake*, reiterated the passage about exceptional instances being of “comparatively little weight, as opposed to uninterrupted usage to the contrary for several centuries.”

Finally, Judge Phillimore, after paying due homage to Coke—“He is only a witness, no doubt, as to the common law, but he is a witness of the highest authority”—“explained” away the exceptions to uninterrupted usage offered by Bebb’s attorney as follows: “The cases as to women holding certain parochial offices have been distinguished, on the very occasions when the possibility of their holding them has been upheld, on the ground of there being offices which, in the view of the Courts, were suitable to women.” With this statement, judicial bias is all but declared. Uninterrupted usage may be interrupted, indeed, has been—not only through legislative initiatives, but by judges—but only when the exceptions have been judged “suitable.” Stuttering over his own written words, Phillimore fumbles through the rest of this discussion (“I do not say . . . what I say is . . .”), at last resorting to a common and “safe” legal out: “The cases as to parochial offices may stand on their own merits; they have really no bearing on this case.” Thus, the evidence that calls into question the common law tradition is dismissed as irrelevant.

After Bebb was denied status as a “person” under the Solicitors’ Act, a Committee for the Admission of Women to the Solicitors’ Profession enlisted the support of the Lord Chancellor and the government, and a bill was introduced to enable women to become solicitors. The Law Society opposed this legislation, and the outbreak of World War I put the issue temporarily on hold.

In both 1917 and 1918, Lord Buckmaster introduced bills to admit women to the legal profession, but was opposed by both the Law Society and the Bar. After women’s substantial contributions to the war effort, however, there was wide support for feminist initiatives, and when in 1919 it became clear that there was strong government backing for opening up the legal profession to women, the Law Society voted to remove all obstacles that kept women from practicing. Later that same year, the Sex Disqualification (Removal) Act was passed, expressly permitting women who had received a law degree, or whose studies entitled them to one, to serve articles and be admitted and enrolled as solicitors.

This Act further provided:

A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or

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166 *Id.* at 296 (Swinfen Eady, L.J.).
167 *Id.* at 298–99 (Phillimore, L.J.).
168 *Id.* at 299.
169 *BIRKS, supra* note 40, at 277.
170 *ABEL-SMITH & STEVENS, supra* note 154, at 193.
171 *Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo. 5, c. 71 (Eng).*.
holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society . . . and a person shall not be exempted by sex or marriage from the liability to serve as juror. 172

Thus, women were also admitted to the Inns of Court. 173

Carrie Morrison became the first woman to be admitted as a solicitor in 1922, 174 and in that same year, Ivy Williams became the first woman called to the Bar.175 In the political realm, the 1918 Representation of the People Act gave the right to vote to women over thirty who were either householders, wives of householders, or had a university education. 176 The 1918 Parliament (Qualification of Women) Act granted women the right to be elected, sit, and vote as members of the Commons House of Parliament. 177 In 1919, Nancy Astor became the first woman to sit in the House of Commons. Women were not granted the right to sit in the House of Lords until 1958. 178 Margaret Bondfield became the first woman Cabinet member when she was appointed Minister of Labour in 1929.

172 Id. § 1.

173 A bill relating specifically to barristers, the Barristers and Solicitors (Qualification of Women) Bill, does not appear to have passed. However, the 1919 Sex Disqualification (Removal) Act accomplished the same end. Corcos, supra note 160, at 386. Helena Kennedy comments that “[i]t was not until the passage of the Sex Disqualification (Removal) Act of 1919 that the admission of women was forced upon the Inns by Parliament, and since that date the acceptance of women has continued to be slow and grudging.” Helena Kennedy, Women at the Bar, in THE BAR ON TRIAL 148 (Robert Hazell ed., 1978) See generally id. at 148–62 (discussing women at the Bar in the late twentieth century).

174 No mention of this first admission was made in the legal papers, and The Law Society Gazette continued to list names of women under the heading “Gentlemen Applying for Admission” for some time. HARRY KIRK, PORTRAIT OF A PROFESSION: A HISTORY OF THE SOLICITOR’S PROFESSION, 1100 TO THE PRESENT DAY 111 (1976).

175 See generally ABEL, supra note 41, at 80–85 (discussing women’s numbers and roles within the Bar from the 1920s to the present). Cornelia Sorabji, an Indian woman who studied law at Somerville College, Oxford from 1889 to 1892, also qualified for the bar in 1922. By the 1930s, she was an internationally known barrister. ANTOINETTE BURTON, AT THE HEART OF THE EMPIRE: INDIANS AND THE COLONIAL ENCOUNTER IN LATE-VICTORIAN BRITAIN 4 (1998). See generally id. at 110–51 (discussing Sorabji’s experience studying law at Oxford).

176 Representation of the People Act, 1918, 7 & 8 Geo. 5, c. 64 (Eng.). This legislation gave the vote to six million out of thirteen million adult women. JOAN PERKIN, VICTORIAN WOMEN 243 (1993). Universal suffrage for women was not attained until 1928 with the passage of the Representation of the People (Equal Franchise) Act, 1928, 18 & 19 Geo. 5, c. 12 (Eng.).

177 Parliament (Qualification of Women) Act, 1918, 8 & 9 Geo. 5, c. 47 (Eng.). Perkin suggests that the influence of women members of Parliament, as well as millions of women voters, prompted the passage of sixteen acts protecting women’s interests in the early 1920s. PERKIN, supra note 175, at 244.

178 For a history of the legal battle of women to gain access to the House of Lords, especially the key role played by Margaret Haig Thomas Mackworth, Viscountess Rhondda, see SHIRLEY M. EOFF, VISCOUNTESS RHONDDA, EQUALITARIAN FEMINIST (1991).
In 1962, Elizabeth Lane became the first woman appointed as a judge in England when Lord Chancellor Dilhorne appointed her to the County Court Bench. In 1965, she was appointed to the High Court Bench. Lane tells her own story in *Hear the Other Side: The Autobiography of England's First Woman Judge*. At long last, women in powerful legal and political roles were able to judge for themselves how they might best be represented.

**CONCLUSION**

When Holly first glimpses Ayesha behind the curtain, he ponders: "Who could be behind it?—some naked savage queen, a languishing Oriental beauty, or a nineteenth-century young lady, drinking afternoon tea? I had not the slightest idea, and should not have been astonished at seeing any of the three." Similarly, T.D. Maxwell had no idea what to expect of Slessor: "What sort of woman I expected to see I hardly know." In the late nineteenth century, because women allegedly had no "public functions" and because women under laws conferring power were not "persons," it is no surprise that Holly and Maxwell had no idea what to expect when about to come face to face with these "exceptional" women.

Munich has argued that the "cultural paradox of Queen Victoria’s specific kind of monarchy—the apparent contradiction of a devoted wife, prolific mother, and extravagant widow who is also Queen of an Empire upon which the sun never sets," resulted in "a fragmentation of symbolization, representations in which all possibilities are entertained ... the representation of excess or the excess of representation." Similarly, in trying to represent Ayesha and Slessor, the narrators respond with a plethora of oftentimes contradictory images. Holly, over the course of his narrative, presents Ayesha as all of the possibilities he imagined. In various contexts, she is naked, savage, a queen, languishing, Oriental (in Saidian terms), a beauty, young (at least looking), and a lady. Maxwell also responds to the unorthodox Slessor with a superfluity of representations. In the space of two pages, he presents her as young and old, fierce and docile, maternal and childish. Ultimately, taking into account the

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179 This meant Lane was also appointed a Bencher at her Inn of Court, making her the first woman to sit on the very prestigious governing body of an Inn. *DAME ELIZABETH LANE, HEAR THE OTHER SIDE: AUDI ALTERAM PARTEM: THE AUTOBIOGRAPHY OF ENGLAND'S FIRST WOMAN JUDGE* 136–37 (1985).

180 *Id.*

181 For a probing and reflective analysis of the influence women have had on the law and the legal process in both the nineteenth and twentieth centuries, see the chapter "Women as Citizens" in *SUSAN ATKINS & BRENDA HOGGETT, WOMEN AND THE LAW* 181–99 (1984).

182 *HAGGARD, supra* note 43, at 141.

183 *LIVINGSTONE, supra* note 131, at 131.

184 Munich, *supra* note 75, at 265.

185 *Id.* at 268–69.
context of his visit, which was to review the performance of one of the British government’s appointed magistrates, he opts for presenting a maternal image, “the Court (that is ‘Ma’)” presiding over infantalized Africans (possibly drawing on the strength of that image from the anomalous royal Court of Queen Victoria).

In the “person” cases, Lord Coke was the star witness, bearing testimony over the centuries as to women’s uninterrupted and thus “rightfully” continued exclusion from public, political, and professional roles. Reading these legal decisions through the lens of feminist jurisprudence, which as Lucinda Finley explains, “tells us to look at things in their historical, social, and political context, including power and gender; distrust abstractions and universal rules, because ‘objectivity’ is really perspective and abstractions just hide the biases; question everything, especially the norms and assumptions implicit in received doctrine [precedent],” we can see clearly that the judges, while literally sitting in judgment, also were very much passing judgment upon those “shes” whom they believed to be overhearing in their ambitions.

It is important to women’s legal history to examine narratives of the past that explored women’s relationship to the law, whether those be judicial opinions, statutes, government documents, or novels. As Gerda Lerner argues in *The Creation of Patriarchy*, the still-pervasive myths that women are marginal to history or mere victims of historical process have “profoundly affected the psychology of women.” A lack of “precedent for significant action, heroism, or liberating example,” Lerner explains, makes it difficult to “imagine alternatives to existing conditions.” The “person” cases illustrate much more than women’s systematic exclusion from the law; they bring to knowledge the heroic efforts of women like Lady Sandhurst and Miss Bebb to change history. Novels such as *She*, which reinforced and constructed cultural ideas about race and gender, provide useful contexts for understanding the complex role and representations of a Victorian woman magistrate in Africa. Legal and literary narratives are important sources of women’s legal history, whether they offer direct testimony of the significant and active roles that women have played in the historical process, or, upon cross-examination, offer a critical understanding of the existing social conditions to which many bold and daring Alices were imagining alternatives.


188 Id. at 222.

189 Id. at 223.