

## I. Eighteenth-Century Fiction In The Light of Contemporary Marriage Laws.

The nature of the marriage contract and the related laws were debated throughout the century, in both fiction and non-fiction. Given the complexity of the issues presented, it is perhaps advisable to give a brief account of their legal history, a history which twentieth-century literary commentators show little or no awareness of.

During the first half of the middle ages marriage was regarded as a personal and secular matter, almost outside the law. Stone notes that up to the eleventh century polygamy appears to have been general in England, with easy divorce and frequent concubinage.<sup>i</sup> In the thirteenth century Pope Innocent III decreed that free consent of the spouses, duly witnessed, not formalities by a priest or in a church, was the sole essence of marriage. However, the Church's stated preference was for marriages to be performed in church, after triple banns. The church wedding was not made a sacrament until 1439 and only in 1563 did the Catholic Church insist on the presence of a priest. The Anglican Church did not recognise this and kept to Medieval marriage laws.

Eighteenth-century marital law was determined by canon law, which was revised and restated in the canons of 1604. These stipulated that a wedding should take place between eight in the morning and noon in the church of the place of residence of one of the spouses, after triple banns. They also forbade the marriage of persons under twenty one without parental consent. Ironically, while declaring marriages in breach of these rules illegal, the ecclesiastical courts still regarded them as binding for life, providing a clergyman had performed the ceremony.

Eighteenth-century fiction's obsession with clandestine marriage seems to mirror contemporary marriage patterns. The Fleet, a centre for clandestine marriages from at least 1674, became notorious after 1695-6, when stamp duties were introduced on marriage licences. According to Brown, between 1694 and Hardwicke's Act (1753), which came into force in 1754, between 200,000 and 300,000 marriages were celebrated in the Fleet and the 'rules', the area surrounding the prison, where debtors could live and work.<sup>ii</sup>

The act of 1712 fined gaolers £100 for every clandestine marriage allowed in their prisons but the trade flourished in the 'rules', exempt from prison jurisdiction. The Act 10 Anne c.19 ordered that offending clergy should be transferred to county gaols for one year but unfortunately did not prevent them from returning to the Fleet by a writ of *Habeas Corpus*.<sup>iii</sup> Further reforms were scarcely more effective: in 1730, all the Fleet parsons were indicted for failing to issue certificates on stamped paper but because they were not legal anyway, nothing could be done. It is possible that by the 1720s, the Fleet was customarily used by dissenters and the London working class, especially if they had no Church affiliation.

Secular marriage customs were also widely practised. The best known was the besom marriage: before witnesses, first the man and then the woman jumped over the besom, or brush, which was placed with the top of the handle on the doorpost. If either party touched the besom when jumping, the marriage was void. Silvia in Farquhar's *The Recruiting Officer* (1706) appears to refer to such practices when, disguised as a soldier, she says, 'Our sword...is our honour; that we lay down. - The hero jumps over it first, and the amazon after...The drum beats a ruff, and so to bed; that's all; the ceremony is concise'(V,sc.i).

Handfasting was another alternative marriage custom, involving exchanging vows before witnesses and joining hands. The couple lived together for a year and a day and, if they chose, extended the marriage for life. Farquhar's Sullen expresses similar ideas in *The Beaux Stratagem* (1707), taking his wife's hand and saying 'These hands join'd us, these shall part us', later referring to it as 'my divorce'(V,sc.iv).

Nonconformists objected to the marriage laws because they were under Anglican control and, like the dissenters, Welsh monoglots and Catholics, they regarded the exchange of consents before credible witnesses as sufficient for a valid marriage, a ceremony that had at least some recognition in civil law. The nonconformist position was ultimately sanctioned by law with the Marriage Act of 1836, which allowed marriages to be solemnised in registered places of worship or

register offices.<sup>iv</sup>

Hardwicke's Act aimed to protect the institution of marriage and to standardise its laws. Hardwicke bought off the peers by allowing archbishops to continue issuing special licences for noblemen to marry when and as they pleased. He pacified the 'middle classes' by allowing surrogates to continue selling ordinary licences, which dispensed with banns, even though corrupt distribution of these licences was a major part of the clandestine marriage business.

However, Hardwicke did attack some of the worst Fleet practices, such as backdating records or producing certificates for non-existent marriages: Blackstone explains that 'to alter...forge, or counterfeit' an entry in a register 'or a marriage licence, or aid and abet such forgery...to destroy or procure the destruction of any register'(IV,p.163) was made felony without benefit of clergy.<sup>v</sup> During the trial of Robert Fielding for bigamy in 1706, it transpired that the keeper of the marriage registers had 'several registers at the same time'. Sir Mountague, the Queen's Counsel, argues that the entry in question 'is written in another character than what the rest are' and 'is written in the lower part of the leaf, where we may suppose a vacancy left to insert such a thing'. The marriage, dated 1705, was entered 'before the marriages in the year 1704'.<sup>vi</sup>

Hardwicke's Act was intended largely to prevent the clandestine marriages of minors, voiding any marriage of a person under twenty one if there was no written consent of parent or guardian. This parental veto clause was much resented. The anonymous *Genuine Memoirs of the Celebrated Maria Brown* (1766) articulates popular concern: 'there are so many obstacles...since the marriage-act...that all sensible people are entirely of the opinion that it is only putting money in the priest's pocket, to publish three weeks before hand to all the parish, that on such a night such a girl is to lose her virginity!'.<sup>vii</sup>

According to the old common law, in force until Hardwicke's Act, children could marry at seven, even without parental consent. The age of consent was then raised to enable boys to marry at fourteen and girls at twelve, again without parental consent. Marriage between children could be declared void if either party wished it on coming of age, without a divorce, but was otherwise regarded as valid. The law remained unchanged until the Age of Marriage Act 1929, which raised the age of consent for marriage with parental consent from twelve for females and fourteen for males to sixteen for both.

Hardwicke's Act stipulated that at least one of the parties had to have lived in the relevant parish for four weeks before the licence could be issued, thus giving parents the same degree of notice as banns, where a parson had to be given seven days notice before the banns commenced. The lack of privacy associated with banns was bitterly resented throughout the century and frequently debated while Hardwicke's Act was being considered. Lydia expresses such attitudes in Sheridan's *The Rivals* (1775), describing the banns as clerks asking 'the consent of every butcher in the parish'(V,sc.i).

Hardwicke's bill was bitterly opposed in Parliament, since there was considerable concern about viewing marriage as a mere contract and the theological issues involved in voiding marriages. Fox led 'The Friends of Bloomsbury Square' in opposition, arguing that it was an aristocratic plot to control the lower classes. They argued that, as Blackstone phrased it, making marriage more difficult could encourage 'licentiousness and debauchery among the single of both sexes'(I,p.438).

It is reasonable to assume that Fox's own Fleet marriage influenced his position. Fox married Lady Georgiana Lennox in a private house in the Fleet in 1744. Other famous cases included Lord Abergavenny marrying Miss Tatton at the Fleet in 1724. Those who identified with the merchant classes tended to be sympathetic to affective marriage and therefore opposed Hardwicke's bill. Their interests were less threatened by companionate marriage than those of the upper classes, since marriage gave them opportunities to gain social status.

Ironically, the act was itself open to abuses. It rendered any marriage conducted with the slightest error, for example, the wording of the banns or a mistake regarding age, null and void, thus facilitating self-divorce. The Marriage Act of 1823 made the validity of marriages with such mistakes depend on the knowledge of the parties. Despite Hardwicke's political power, Lord Holland and Fox forced him to accept a clause making false statements of places of residence on

licences insufficient to nullify a marriage, thus facilitating the practice of faking residence in another parish and having the banns read and the licence obtained there. It is important to bear such things in mind when approaching eighteenth-century law and the fiction which deals with it: it is not the fiction which is inconsistent but the law which it reflects.

### **Defoe: *Moll Flanders* (1722)**

Legal issues and related contemporary debate inform much of Defoe's writing and *Moll Flanders* is no exception. Peterson argues: 'Defoe's legal detail, although not absolutely clear, endows the narrative with a convincing reality'.<sup>viii</sup> He fails to appreciate Defoe's accuracy and to allow for the fact that Defoe might be deliberately engaging with legal issues as part of the narrative's ideological framework.

Novak recognises the legal context, noting that Moll's first lover 'makes an oral promise of marriage, which she later tries to convince him is a binding contract', realising that she should have asked 'for a legal marriage'.<sup>ix</sup> There were two kinds of oral marriage vows. *Sponsalia per verba praesenti*, a promise in the present tense, made an immediately binding marriage. *Sponsalia per verba de futuro*, a promise for the future, was bilaterally revocable prior to consummation but the church assumed a further contract would be substituted and could 'admonish' a couple to marry. Moll's verbal contract is of this nature.

Blackstone explains that before Hardwicke's Act (1753), 'Any contract made *per verba de praesenti*...and in case of cohabitation *per verba de futuro* also' was 'deemed a valid marriage to many purposes; and the parties might be compelled in the spiritual courts to celebrate it *in facie ecclesiae*'(I,p.439). Novak refers to Salmon's *Critical Essay Concerning Marriage* (1724), which argues that 'a conditional marriage becomes a real marriage when the couple have lived together as man and wife'.<sup>x</sup> Novak concludes: 'Moll is entirely correct when she tells him that she was as much his wife'(p.100) "as if [they] had been publicly Wedded"<sup>xi</sup>. The situation is in fact somewhat more ambiguous: Moll and her lover have not cohabited openly as man and wife and so their relationship is, at best, what Salmon refers to as 'a conditional marriage'.

Moll emphasises the moral and legal ties between them, endeavouring to make their agreement appear as binding as possible: 'he had Engag'd himself to Marry me, and...my Consent was...Engag'd to him...he had all along told me I was his Wife, and I look'd upon my self as effectually so, as if the Ceremony had pass'd'(p.75). She is correct in that both honour and law dictate that their vows should be ratified; however, until they are, she is not in any full legal sense a wife. Her lover recognises the moral imperative, admitting that her argument 'may be true in some Sense'(p.77). Yet both he and Moll realise that although she viewed herself as his wife, the law would not. If Moll claimed to be married to him, he could bring a suit for jactitation to obtain a court order preventing her in the future from publicly claiming marriage on grounds of verbal contract.

Moll realises that her argument 'took from him all possibility of quitting me but by a down right breach of Honour'(p.92). She appears to be referring to the legal notion of breach of promise. Blackstone explains that a suit could be brought 'in the ecclesiastical court, to compel a celebration of the marriage'(III,p.93). Yet such suits were expensive and Moll would need a male representative to bring it for her and so she is effectively helpless. Blackstone explains that the position was not clarified until Hardwicke's Act, which prohibited 'all suits in ecclesiastical courts to compel a marriage, in consequence of any contract'(I,p.435). In order to avoid ruin, Moll is forced to marry her lover's younger brother privately.

Defoe explores through Moll's experiences a number of aspects of marital law which were of contemporary interest, particularly remarriage after desertion. Novak argues: 'Moll's 'empirical assumption that desertion constitutes divorce...had strong support from writers on natural law'(p.101). Moll's reasoning is not empirical but based on popular understanding of law. Novak fails to differentiate adequately between 'natural law' and actual legislation. Moll herself embodies the tension between natural and actual law. She reflects popular opinion: not having heard from the

linen draper for fifteen years, she comments, 'no Body could blame me for thinking my self entirely freed from' him, since he had said 'if I did not hear frequently from him, I should conclude he was dead, and I might freely marry again'(p.180).

However, when a wealthy lover ends their relationship, Moll remembers her linen draper husband, 'I was all this while a marry'd Woman', whose husband 'had no power to Discharge [her] from the Marriage Contract' or to give her 'a legal liberty to marry again'(p.177). Moll's concern, inconsistent and superficial as it may be, seems to be in infringing moral codes rather than the law, but she is clearly aware of her legal position.

Moll's divorced bank trustee wishes to marry her but she 'rais'd some Scruples at the Lawfulness of his Marrying again'(p.230). The banker's wife kills herself and so the objection is invalidated. It is probable that Moll's primary concern is her own marital status, since she is still married to her 'Lancashire husband', although she continues to argue when it suits her that he 'Discharg'd me...and gave me free Liberty to Marry again'(p.232).

Peterson comments usefully that 'the legal phraseology' of the Lancashire husband's suggestion that separation by mutual consent allows remarriage 'cannot disguise the popular misconception of the matrimonial law'. He argues that 'Like the Governess, Moll is prepossessed by the popular misconception of the matrimonial law'(p.173), in that she accepts 'the Linnen-Draper had not the power to discharge her from the marriage contract'(pp.173-4) but persists 'in claiming the right of remarriage'(p.174). This is surely a misreading of Moll's character: she simply attempts to argue herself out of moral and legal obligations according to her personal desires.

Moll's 'governess' encourages her to ignore the law and see herself as almost exempt, arguing that 'as [they] were parted by mutual Consent, the nature of the Contract was destroy'd, and the Obligation was mutually discharg'd'(p.233). This may sound plausible and is calculated to appeal to Moll but it is nonsense in terms of the law. The 'nature of the contract' may be changed in emotional terms but the legal terms remain. Desertion did not constitute legal grounds for remarriage according to canon or common law because it did not invalidate the existing marriage. The very fact that Moll ultimately recognises the 'Lancashire husband' as her husband and lives happily with him suggests that morally and legally, their marriage is valid; her other marriages were invalid and could not invalidate her earlier marriage contract.

Peterson argues pertinently: 'Defoe's characters could scarcely be deemed realistic in the face of these inconsistent judgements if it were not true that the matrimonial law of the period also lacked clarity'(p.174). I would argue that the idiosyncratic nature of Moll and Roxana's moral judgements also goes some way to explaining apparent inconsistencies.

Moll lives according to her own version of law and morality. She often acts outside the law but her conduct must still be regarded in a legal context, since Defoe assumes that his readers are aware of the legal implications of her actions. She does not inhabit a world where cohabitation is acceptable and her catalogue of marital 'crimes' would shock eighteenth-century readers.

Due to the irregularities in the birth, death and marriage registers, it was possible to marry a relation unwittingly. Moll marries her brother and consequently feels a 'riveted Aversion'(p.147) to him, 'it being an unlawful incestuous living'(p.148). Bell finds Moll's horror at incest 'idiosyncratic', referring to Novak as demonstrating that Moll's revulsion 'is much stricter than would be likely from any of the theorists of Natural Law, from whom Defoe drew so much'.<sup>xii</sup> This does not account for the moral register of the text, seemingly inconsistent and troublesome though it may be, although Novak recognises that 'For Defoe, incest was a violation of the laws of God and nature'(p.109). Defoe treats incest as a moral and legal issue, not simply in relation to natural law.

Blackstone explains that in 1650, the period in which *Moll Flanders* is set, 'the ruling powers...put on the semblance of a very extraordinary...purity of morals' and made incest a capital offence. He continues, 'at the restoration...men...fell into a contrary extreme, of licentiousness' and 'it was not thought proper to renew a law of such unfashionable rigour'. Hence offences such as fornication were 'left to the feeble coercion of the spiritual court'(IV,p.64). Yet this leniency does not appear to have extended to incest.

Although the novel is set in the seventeenth century, Defoe presumably expects readers to

have eighteenth-century assumptions concerning law: they would have known that incest was still punishable by death. One cannot simply dismiss Moll's moral and emotional reaction to incest: her horror is consistent with natural human reactions, current law, both in the 1650s and the 1720s, religious thinking and presumably, Defoe's own moral position.

Moll is clearly aware that consanguinity renders their marriage legally invalid, 'he neither was my lawful Husband, nor they lawful Children'(p.142). She also realises that if she is to obtain a separation, she will need her mother's testimony or she may 'be counted Craz'd', or condemned as 'an impudent Creature that had forg'd such a thing to go away from [her] Husband'(p.147). Before telling her brother, she asks him to sign a document she hopes will protect her, stating that he 'will not blame [her], use [her] the worse, do [her] any Injury'(p.151).

Moll is afraid that if she tells him the truth, he might 'take the Advantage the Law would give him'(p.145) and 'put [her] away', leaving her 'to Sue for the little Portion that [she] had, and perhaps waste it all in the Suit, and then be a Beggar'(pp.145-6). This may seem an unreasonable fear, created for dramatic purposes. Yet Moll's husband could sue her for separation and would not have to return money she brought to the marriage if he won. Even if she could prove in court that she did not knowingly encourage him to commit incest and the court awarded her maintenance or part of her original 'portion', it could be expensive and difficult to sue a man who refused to pay. She would probably not have been able to afford a court case because her money would have been in her husband's hands. Her fears are sadly realistic. Fortunately, her brother shares her horror and agrees to a separation without a court case.

Through Moll, Defoe explores a variety of infringements of marital law, for example bigamy, which Blackstone explains 'is used as synonymous to polygamy'. Bigamy was not made a civil offence until 1603, when it became grounds for a nullity suit and could thus end a marriage. Blackstone explains that 'Such second marriage, living the former husband or wife, is simply void'(IV,p.163) according to ecclesiastical law. Theoretically, bigamy carried the death penalty but in practice it was often mitigated by benefit of clergy, leading to burning of the thumb, which could in turn be softened by appropriate bribery. By the 1760s it was argued that a nominal burning was done in the face with a cold iron, but the penalty was changed in the 1790s to transportation for seven years, without benefit of clergy.

Moll unwittingly marries her brother while not knowing if her husband is dead. She reasons herself out of moral and legal issues with an amoral pragmatism similar to Roxana's: 'as to my other Husband he was effectually dead in Law to me, and had told me I should look on him as such, so I had not the least uneasiness'(p.142); what one might call 'a new and convenient code of morality!<sup>txiii</sup>

Peterson recognises that the confusion regarding remarriage after desertion 'reflects a corresponding uncertainty in the prevailing matrimonial law'(p.173). The 1603 act concerning bigamy decreed that, as Blackstone explains, 'Where either party hath been continually abroad for seven years, whether the party in England hath notice of the other's being living or no' or 'Where either of the parties hath been absent from the other seven years *within* this kingdom, and the remaining party hath had no notice of the other's being alive'(IV,p.164), a second marriage is void, although no prosecution for bigamy will be brought.

Novak comments usefully, 'That Defoe should have introduced such technical legal material into his fiction may seem strange, but he appears to have been fascinated by this subject', particularly by 'the contrast between marriage under the law of nature where any number of contracts might be valid and marriage under the positive laws where only certain contracts were "authentick"'. He continues, '[Defoe] argued that a promise, whether made before witnesses or in private, was equivalent to marriage since it had the power of an oath before God': it was 'part of the law of nature'(p.99).

Novak still appears to be unclear concerning the difference between natural and actual law, implying a history of marriage contracts under natural law, as opposed to recognising them as part of ecclesiastical law. His comments concerning Defoe's interest in natural law are useful but we need to take more account of the specific nature of 'natural', ecclesiastical and common law in order to understand *Moll Flanders's* place within contemporary legal debate.

## *Roxana* (1724)

Defoe returns to the problem of remarriage in *Roxana*, again balancing ideas of natural law against English law. With reference to Roxana's relationship with her landlord, Zomchick argues: 'the natural legality of [the landlord's] ends makes them moral...Because their respective spouses no longer fulfill their obligations, he and Roxana become free'. He emphasises 'the juridical nature of the bond that ties him to Roxana', arguing that the landlord's sexual relations with Amy are legitimate because 'he is temporarily released from obligation by the person who made the contract with him': Roxana. Zomchick argues that their 'unembarrassed negotiations constitute a juridical - perhaps even a social - ideal.'<sup>xiv</sup>

In dignifying what is effectively prostitution by referring to it as a juridical, let alone a social ideal, Zomchick misinterprets the nature of the text: Defoe does not condone all of Roxana's actions and does not encourage the reader to do so either. Interest in natural law notwithstanding, Defoe is clearly not presenting their situation as a social ideal. The contract is not dissimilar to Mr B's mock marriage contract later in the century in *Pamela* (1740). Both men appropriate legal language to hide immoral aims: the documents are clearly illegitimate sexual contracts, based on the legitimate sexual contract of marriage.

The 'legality' of the landlord's intentions is not at issue: it is a moral question. Their 'contract' is not legal and so not legitimate, which perhaps reflects their moral situation appropriately. Zomchick argues that Roxana is 'like' a wife, a legal and moral nonsense, and that the fact that the landlord's 'motive for striking this agreement is his [sexual] desire...indicates the objective powers of the contract to redistribute wealth through apparently subjective processes'(p.45). It seems likely that Defoe would disapprove of his ingenious but morally fallacious argument and regard the arrangement as immoral, a first step on the road to Roxana's subsequent prostitution.

The characters seem to seek legal sanction for their actions, at least superficially, perhaps to satisfy their somewhat idiosyncratic moral feelings. Roxana's husband has deserted her and Amy tells her 'as my Master has left you so many Years, he is dead to be sure...tho' you cannot bring the Laws of the Land to join you together...you may certainly take one another fairly'. Roxana's husband also takes part in the legal discourse, later defending himself: 'he wish'd there had been a Law made, to empower a Woman to marry, if her Husband was not heard of in so long time'.<sup>xv</sup> Peterson, one of the few commentators to engage with legal detail at all, argues that eighteenth-century readers 'held a stringent view of divorce and remarriage' and that this idea is 'of the wickedest sort'(p.173). Yet permanent desertion was regarded as dissolving marriage morally, albeit not legally, as late as the 1790s.

Roxana does not simply present popular debate concerning remarriage but questions the marriage contract itself. Roxana argues, 'I thought a Woman was a free Agent, as well as a Man', claiming, 'the very Nature of the Marriage-Contract was, in short, nothing but giving up Liberty, Estate, Authority, and every-thing, to the Man', rendering the woman 'a Slave'(p.187). Roxana clearly places her argument within a legal context: 'while a Woman was single, she was a Masculine in her politick<sup>xvi</sup> Capacity...was controul'd by none, because accountable to none, and was in Subjection to none'(p.188). Women over twenty one were legally independent but if they married, their legal identity was subsumed into that of the husband.

James argues that 'Roxana habitually equates the wifely rôle to servitude, slavery and imprisonment', failing to recognise that this was a common analogy, used from Astell at the beginning of the century to Wollstonecraft at the end. He claims, 'Roxana would seem to justify her aversion to marriage on the basis of her unfortunate union with the brewer'.<sup>xvii</sup> Her ethos is based partly on personal experience, but also on her knowledge of law, which James fails to address. Part of Roxana's rôle within the novel is to articulate legal criticism.

With this in mind, Roxana's ultimate apparent capitulation to the Dutch merchant is problematic: 'he shou'd see I knew how to act the Servant's Part'. She does indeed know how to 'act the...Part': Roxana appropriates various discourses according to the rôle she is exploring. James is

wrong to assume that it is of sufficient importance to discredit her earlier consistent and detailed legal criticism. Roxana admits the subterfuge, 'this was indeed, but a Copy of my Countenance'(p.277).

Peterson argues, 'Great respect for law and established custom characterizes Defoe's presentation of the matrimonial theme. If Roxana rebels against the common law and plays the "new woman," she resorts to legal modifications substantiated by the courts of equity'(p.191) in that her property is put into trust when she marries the merchant. He tells her, 'I will not touch' the papers 'till they are all settl'd in Trustees Hands, for your own Use, and the Management wholly your own'(p.304). Peterson argues somewhat simplistically: 'Her earlier fears of the common law have been assuaged'(p.290). Roxana realises that the trust means that 'in Case of your Mortallity I may have [the property] reserv'd for me, if I outlive you'(p.305). Yet she knows the law well enough to recognise that trusts are not as idyllic as Peterson believes and can be broken by husbands: if anything, it is the merchant's consistent goodness which reassures her.

Peterson notes usefully that minor characters such as Moll's Governess and Amy in their respective novels 'suggest major defects in marriage and divorce procedures'(p.191), although he appears to be contradicting his earlier position that Defoe shows great respect for law. He concludes, 'they speak, to the contemporary reader familiar with matrimonial law, the language of the devil's agents. If Defoe the journalist had earlier rejected some of their reforms, the novelist at least allowed the devil to have his say'(p.191). I would argue that Defoe was not so averse to questioning and even criticising the law as Peterson supposes: there is some tension between Defoe's moral views and his analysis of law, a tension which needs to be recognised and accepted, rather than dismissed in favour of something 'neater' which only addresses notions of conservatism.

Richetti addresses this tension within the character of Roxana pertinently, but seems dismissive of her legal critique: 'Defoe gives [Roxana] a sort of proto-feminist sensibility, which he then seems to undercut by dramatizing its distorting excesses. This satire cuts both ways.'<sup>xviii</sup> James's comments on Roxana provide a useful example of paternalistic literary criticism and are worth quoting at length. While claiming to understand Roxana, he reveals a total lack of comprehension for what she stands for, particularly in terms of legal criticism: 'The vehemence of Roxana's metaphors and similes testifies to her aversion to matrimony,' and 'illuminates her unnatural and unwomanly psychology...reveal[ing] an unexpressed, and, on her part, perhaps unrecognized resentment of being a 'mere Woman', and an unstated jealous loathing of the male sex...Roxana here repeatedly delineates herself as 'Masculine' and 'as a Man'. Her contempt for the normal members of her sex, in all their feminine softness and submissiveness, is highly revealing, as is her final self-styled designation as a 'Man-Woman,' which epithet explains far more about her twisted mentality and sexual coldness than she perhaps realizes. She is, unlike Moll, far more man than woman, and, again unlike the latter, she sees herself in open conflict with the masculine world'(p.242).

James's study is self-confessedly 'rhetorical', a commentary on literary style and method, but he provides a useful example of the problems of ignoring law: he misinterprets Roxana's character and attitudes and thus Defoe's intentions. He fails to address the ambiguity in Roxana's presentation: she can seem unnatural, in relation to her children, for example, but it is difficult to comprehend how James is able to quote her comments on women's legal condition and fail to consider the legal critique. Claims such as James's to understand characters better than they understand themselves are always suspicious and in this case clearly unfounded.

Roxana does not want to be a man physically but in terms of legal rights: she wants equality. In the eighteenth century, women who wanted the same rights and opportunities as men were condemned as unnatural, criticised in sexual terms as 'half-women' who were trying to be men. It would appear that some twentieth-century commentators have not advanced the terms of their critique very far. Roxana needs to be understood partly in terms of her argument for legal rights. James does not consider the legal background and so does not recognise Roxana's part in articulating common and justified concerns regarding law.

Novak argues: 'Defoe's heroines are often accused of being unfeminine...probably because Defoe regarded them as equal to men in ability and character', but he does not mention the legal

inequalities which provide such an important background. He notes briefly Defoe's 'vicious attacks on contemporary marriage mores'<sup>lxix</sup> but not his legal criticism. Roxana moves, quite self-consciously, within a legal context. In order to understand the novel fully, we need to move beyond generalised terms such as social mores, and to relocate both heroine and text into a more specifically legal context.

### Mary Davys: *The Reform'd Coquet* (1724)

In *The Reform'd Coquet*, Davys uses the popular narrative convention of a rake seducing women by marriage promises. Yet she provides not only a presentation of moral issues and a dramatic plot, but a detailed consideration of the laws regarding precontract. Lofty promises marriage to Altemira, giving her a bond stating that he will forfeit ten thousand pounds if he reneges. Since it has been dated and witnessed, it is almost as binding as marriage: her belief that he will ratify the contract and that her honour is thus safe is not unreasonable.

William Gouge, a moral theologian, articulated common confusion concerning precontract in the seventeenth century: 'contracted persons are...neither simply single nor actually married'.<sup>xx</sup> This confusion carried on into the eighteenth century and would have been recognisable to contemporary readers. There was a general recognition of a moral tie, which many people felt should be legal; hence Fielding's Dr Harrison argues that Booth and Amelia 'ought as much to be esteemed man and wife, as if the ceremony had already past'.<sup>xxi</sup>

Altemira contemplates her situation carefully, clearly aware of the legal context. Her vocabulary is specifically legal, referring to the contract as 'his Act and Deed'. Lofty plays on the quasi legal nature of their relations: 'I now look upon you with a Husband's Eyes, you are *in Foro Censcientiae* my Wife', perhaps using Latin, a language usually only accessible to men, to impress her and suggest formality and legality.<sup>xxii</sup>

Lofty 'sen[ds] his Chaplain for a Licence'(p.68) and pleads, 'give me a Bridegroom's privilege'. She 'consider'[s], a few hours wou'd give him a just title', interestingly using a legal term for property, 'title', to refer to herself. The term was not unusual in this context, reflecting the well established concept of women as their husbands' sexual property. Colman and Garrick play on this concept in *The Clandestine Marriage* (1766). Lord Ogleby asks the appropriately named Lovewell, 'by what right and title', both legal terms concerning property, he has been in Fanny's bedroom. Lovewell argues, 'By that right that makes me the happiest of men; and by a title which I would not forgo'(V,sc.i).

Altemira capitulates because of the 'firm engagement...under his hand'(p.69). He suggests a private marriage the following day but goes to London. Altemira resolves to assert her legal rights 'if he refused to marry' her: 'to sue his Bond, recover the ten thousand Pound'(p.72) and live in retirement. Altemira has a strong case for suing Lofty for breach of promise. If she won, the court would insist that he marry her, or award her damages because she would be unlikely to find a husband to support her. *The Gentleman's Magazine*, 5th June, 1747, relates a real court case concerning breach of marriage promise. A man had repeatedly proposed marriage to the plaintiff's daughter and witnesses and letters proved it. The plaintiff won £7,000 in damages. Unfortunately, Altemira's maid has stolen the evidence, that is the bond, for Lofty.

Lofty tries to win Amoranda's affections but Altemira warns her to reject his advances 'as from a married Man'. Amoranda recovers the bond and presents it to Altemira, who is delighted to have this 'testimony of his Villany'(p.75), presumably using the word 'testimony' in its legal sense, as evidence. Amoranda recognises that the bond is a legal contract, as opposed to a romantic promise, advising Altemira to write to tell Lofty that she expects 'all the satisfaction the Law can give'(p.76) her. Formator agrees to help but interestingly, he reacts as a 'Man of Honour' and Amoranda, a woman, acts as legal advocate. Altemira's knowledge of law enables her to invert the balance of power usual between the seduced and the seducer: she tells Lofty that the recovery of the bond 'has put you into my power', warning, 'I intend to carry it as far as the Law will bear'(p.78).

Amoranda has Altemira's letter to Lofty delivered and insists that he read it in front of her.

His reaction is consistent with the throes of romantic guilt: 'he turn'd pale as Death, stamp'd, and cry'd - Zouns'(p.83). He determines 'to put a stop to [Altemira's] Expectations, by marrying of Amoranda', assuming Altemira will 'be glad to come to his Terms...for her own Credit'(p.84) or reputation. Lofty tries to persuade Amoranda to marry him immediately, since 'your old, crabbed Guardian, is now from home' and so cannot prevent it. She counters, 'the Canonical Hour is past, and you have no Licence'(p.85) but he replies, incorrectly, 'The Canonical Hours...are betwixt eight and twelve, and not a farthing matter whether Morning or Night'(pp.85-6), thus aligning himself with the dubious practices of clandestine marriage centres such as the Fleet, which ignored the clear ruling that Canonical hours were eight in the morning until noon. Since Amoranda's guardian is not present to consent, the marriage would not be according to legal forms. Lofty is proposing a legally and morally dubious marriage, presumably aware that the ecclesiastical courts will not dissolve marriages, even if they do not conform to legal standards. Had the novel been set after Hardwicke's Act (1753), this sort of marriage would have been impossible.

Lofty intends to use the same licence he had bought for Altemira to marry Amoranda: 'twas no more than scratching out one name, and interlining another'. Contemporary readers would presumably have smiled at this, knowing that such things were possible at clandestine marriage centres. Amoranda proposes that they marry at night, ostensibly so that Formator, her guardian, cannot 'prevent our designs'(p.86). Altemira dresses as Amoranda and so Lofty marries Altemira thinking she is Amoranda. In order to ensure that the marriage is legal, Amoranda tells Altemira to insist on whispering for the sake of secrecy, enabling her 'to pronounce her own Name'(p.87) during the ceremony. Amoranda and Formator position themselves to act as witnesses. They then wait for the couple to go to bed and enter the chamber to congratulate them, carefully establishing witnesses to the probable consummation, which rendered marriage legally indissoluble.

Lofty 'show[s] himself a Man of Honour at last' and repents, allowing Formator to articulate a moral lesson: 'Virtue is its own reward'(p.89). This may appear somewhat trite but, when taken in context with the preceding legal material, this scene presents a quiet but profound female victory over masculine threat: Lofty repents partly because he has no other option.

In closing the scene with a happy moral, Davys brings the potentially disturbing proceedings into line with romance, but this does not negate the legal points being made: Davys criticises law-givers such as Lofty, whose behaviour is appalling and who believe themselves to be above the legislation they create for others. Amoranda teases Lofty, 'I wonder...your Lordship does not get the House of Lords to endeavour to repeal the Law of Marriage: Why shou'd you Lawgivers impose upon other People, what you think improper to follow yourselves?'. Davys is clearly lampooning real law-givers; hence Lofty is referred to as a representative, not an individual: 'the Peer'. He replies appropriately, 'there are politick reasons for what we do'(p.81).

The narrative is also interesting in that it presents yet another instance in fiction of female knowledge of law and ability to use it equitably but courageously. It is worth remembering that women were completely debarred from the legislative process and yet in this novel it is they who use law for just and moral purposes, not men like Lofty, representing what one may refer to as the 'legislating classes'; it is they who effectively pass judgement on Lofty and decide his fate.

Davys uses legal issues as a staple part of her plot, assuming that readers will be familiar with them. The narrative may appear to be purely sentimental but it is predicated on a legal issue, revealing female vulnerability under the laws concerning contract but also feminine resourcefulness in facing such problems, using the law to their advantage. Davys sees the potential for narrative suspense in a legal predicament, deliberately combining concern with legal issues, particularly feminine vulnerability under the law, with fiction.

### **Richardson: *Clarissa* (1747-8)**

Clements comments pertinently, 'Richardson's novels seem at times to be merely long dialogues on the rights of women', although she does not locate these 'dialogues' within their legal context. Richardson himself was deeply conscious of law and reflected current interest in legal

issues such as choice of marriage partner, presenting an acute case in *Clarissa*. Clements recognises, 'The wife's complete subordination made the choice of a husband of major importance', which 'provided the novelist with his most popular plot device...forbidding the heroine to marry the man she loves or...attempting to force her marriage to someone she detests, usually by exertion of economic pressure'.<sup>xxiii</sup> Watt notes in *Rise of the Novel*: 'There is much evidence to suggest that marriage became a much more commercial matter in the eighteenth century than had previously been the case': 'Newspapers carried on marriage marts, with advertisements offering or demanding specified dowries and jointures'.<sup>xxiv</sup>

Clements notes pertinently that 'This favourite plot complication combined with the factual accuracy demanded in the novel could turn a work into a feminist document even though the author's main purpose may not have been criticism of the received notion of the rights of women'. It is interesting that she notes 'factual accuracy' was necessary to the novel but does not recognise the rôle of legal detail in creating this accuracy. However, she does recognise the importance of such detail: 'By accurately depicting social conditions and attitudes, he was obliged to expose the injustice of his age's treatment of women'(p.70). I would argue that such comments can be usefully applied not only to Richardson but to eighteenth-century novelists in general.

Doody argues: 'That Richardson did not exaggerate the pressure put upon Clarissa, and the misery of the prospect confronting her, can be seen in the true stories of...Mrs Delany...and Lady Mary Wortley Montagu.' Yet Doody's reading largely ignores socio-legal issues, arguing that Richardson's novels 'are concerned with the search for the reconciliation of love and freedom, and with how much may be endured in our quest for fulfilment' but failing to recognise the rôle of law in determining individuals' rights to love and freedom.<sup>xxv</sup>

Tompkins comments, 'the most frequent of all...didactic themes' in eighteenth-century narratives 'is filial obedience'. She ignores the legal background, thus failing to differentiate between 'generous submission' in 'Son to father, wife to husband, servant to master, even friend to friend'. Such 'ritual[s] of subjection' were indeed 'a favourite channel of sensibility' but they had another dimension: children, wives and servants were bound to obey parents, husbands and masters respectively; friends clearly had no such obligation. Tompkins recognises that women 'needed to idealize submission to preserve their self-respect' and notes briefly that 'submission' is 'based on economic necessity sublimated by Christian ideals' but she fails to note the legal imperative.<sup>xxvi</sup>

Choice of marriage partners inevitably raised issues of filial obedience but also legal rights, a point commentators seem reluctant to deal with in appropriate detail. Houlbrooke argues that although many parents took children's wishes into account, property was an important consideration in upper class marriage transactions: 'Strict settlements of the seventeenth century commonly made payment of daughters' portions conditional on their compliance with parental wishes', a practice which appears to have continued into the eighteenth century.<sup>xxvii</sup>

Blackstone's explanation of the law can be ambiguous but it appears that a woman could refuse a suitor who was deformed, since moral and physical aversion usually constituted reasonable grounds for refusal. Throughout the century, writers presented women's vulnerability under such laws, for example, Mandeville's *The Virgin Unmask'd* (1709). Aurelia's father, rather like Clarissa's, chose a suitor who was 'very deformed, and slighting the Aversion' she expressed, 'resolved to make use of all his Authority, to force her Inclinations, and rather Marry her by Violence, than miss of so rich a Prize'.<sup>xxviii</sup>

Clarissa is aware that if she does not explicitly argue her aversion, her feelings will be conveniently explained as 'only maidenly objections'. While ostensibly praising feminine delicacy, such attitudes rendered it more difficult for a woman to assert her legal right to declare aversion. Clarissa does not mindlessly challenge authority: 'had but the sacrifice of *inclination* and *personal preference* been *all*...My *duty* should have been the conqueror of my *inclination*.' She argues that duty itself forbids it, 'Had I a slighter notion of the matrimonial duty than I have, perhaps I might'.<sup>xxix</sup> Godwin's Emily articulates similar criticisms of arranged marriages later in the century when Tyrrel tries to force her to marry Grimes: 'Marriage is a serious thing. You should not think of joining two people for a whim, who are neither of them fit for one another'.<sup>xxx</sup>

Clarissa is adamant: 'it is not obstinacy I am governed by: it is...an aversion I cannot overcome'(p.153). Eighteenth-century readers would have been acutely aware of the legal implications of this statement, which we may be apt to interpret as simply expressing dislike. Clarissa is aware that public opinion proves the reasonableness of her 'aversion to a man whom everybody thought utterly unworthy of *me*'. It must be remembered that this is what Lovelace has told her, presumably for his own ends. The text is littered with phrases such as 'He represented to me'(p.168). Yet other characters support this view and even Mrs Howe does not approve of Clarissa's ill-treatment. Richardson's presentation of Solmes, albeit through Clarissa's account, ensures that we concur.

Her family later tell her, 'If you had *held* your aversion, it would have been complied with'(p.503), in accordance with law, but there is little evidence to suggest this and the statement is only made when Clarissa is no longer in their power. Godwin refers to the same trick, presumably feared by young women in reality, at the end of the century. Tyrrel tells Emily, 'let Grimes court you' and 'If then you persist in your wilfulness, why there, I suppose, is an end of the matter'(p.62), while having no intention of allowing her to refuse. Theoretically women had the right to refuse but, as Clarissa finds, this could lead to family rejection. Clarissa is aware that the law empowers her parents to oppress her and that she cannot practically have recourse to it for protection.

Clarissa's father demands, 'No qualifying! - I will be obeyed'(p.65). James sneers, 'The liberty of *refusing*...is denied you, because...the liberty of *choosing* to everyone's dislike must follow'(p.223). Aware of the family's power, he mocks, 'if we intended to use force, we could have the ceremony pass in your chamber'(p.224). Clarissa's 'imprisonment' and the refusal of pen, paper and access to friends was legal 'by default': it was not prescribed by law but was not illegal. Richardson is not simply presenting a fictional maiden in distress but portraying a potential reality. Young people had no more legal protection at the end of the century, when Wollstonecraft argued against 'the barbarous cruelty of allowing parents to imprison their children' to force them to marry as they please, calling it 'one of the most arbitrary violations of liberty'.<sup>xxx</sup>

We must not underestimate the importance of Clarissa's stand. She is asserting the affective rights of the individual against the economically determined precepts of the law and this would not have been taken lightly. Like Wollstonecraft's Maria later in the century, Clarissa asserts her right to have her feelings respected: 'what law, what ceremony, can give a man a right to a heart which abhors him'(p.87). One might more readily expect such criticism from Wollstonecraft than Richardson.

Richardson supported conservative moral systems but not without questioning social and legal concepts. In *Sir Charles Grandison* (1753-4) Harriet articulates conventional beliefs: 'A *preference* we ought to give' but 'No aversion pre-supposed...reason and duty [will] give this preference'. However, she herself has been fortunate in combining inclination with duty and so is not entirely convincing. Charlotte Grandison admits that she 'married with indifference' but regards herself as 'an example of true conjugal felicity'. It is perhaps again Richardson who argues through her that 'Passion is transitory; but discretion' and 'Mild, sedate convenience' give 'durable happiness'.<sup>xxxii</sup> Richardson's work evinces a struggle between supporting conformity to established mores and an awareness that some laws and customs must be challenged; this is fully demonstrated in *Clarissa*.

Clarissa is not alone in recognising the importance of law in her life. Lovelace provides a satiric view of marriage laws, one which Richardson would presumably not endorse, but which enables him to consider legal detail while allowing the reader intellectual amusement. Lovelace copies out a marriage licence and comments on it in detail to Belford, referring to it as 'A good whimsical instrument' and lampooning the document in its entirety, assuming that the reader will be sufficiently aware of licence legalities to appreciate the humour. His jocular tone is in stark contrast to the formal tone of the document. He even jokes about issues such as precontract, which invalidate the certificate, 'I have had three or four precontracts in my time, but the good girls have not claimed upon them of a long time'(p.879).

The licence states, '*We do hereby, for good causes...give and grant our licence*'. Lovelace

sees the 'good causes' as financial, musing, 'what did it cost me[?]'. The licence declares, '*if hereafter any fraud shall appear to have been committed, at the time of granting this licence, either by false suggestions, or concealment of the truth...the licence shall be void*'. Lovelace retorts, 'I ought not to marry under this licence'(p.871), recognising the importance of the licence as a legal document and apparently disconcerted by its formality; hence the need to joke about it. It may even be reaching his elusive conscience.

Lovelace is clearly conscious of the legal aspects of sexual relationships. Doody argues: 'At its most audacious, Richardson's humour plays upon the sexual relationship', for example, 'the ingenious and convincing logic with which Lovelace elaborates his scheme for universal annual marriage and its beneficent effects': lowering the crime rate, satisfying the courts 'whether *spiritual* or *sensual*, *civil* or *uncivil*'(p.873), which she describes as 'a parody of the formulas of social concern worthy of one of Swift's projectors'(p.378). Doody fails to understand Lovelace's wordplay: the behaviour of civil courts and the cases they dealt with were often 'uncivil'; spiritual courts dealt with decidedly 'sensual' issues. Blackstone comments sarcastically that were it not for their 'universal influence', one would be surprised that celibate priests should be 'proper judges' in matrimonial causes, adding that the nature of the injuries and the clergy's treatment of them were often 'too gross for the modesty of a lay tribunal'(III,p.93). Richardson assumes that readers are aware of the legitimate rôle of these courts but also of their reputations for scandal: 'uncivil' and 'sensual' might be thought to be more appropriate names for them.

Lovelace's humour is predicated on an awareness of the nature and jurisdiction of these courts. He appears to be listing several courts but in fact refers only to civil or ecclesiastical courts, sometimes known as spiritual courts, perhaps referring implicitly to the confusion engendered by having so many different courts. Not only were there different names for the same court but different courts had overlapping jurisdictions: marital issues were dealt with by both common law and ecclesiastical courts. Doody recognises the parody but fails to locate it within its legal context, regarding it simply as a generalised articulation of 'social concern'. Such a reading fails to account fully for the passage's meaning to contemporary readers and thus misses its humour: Lovelace is articulating criticisms concerning the practice of ecclesiastical courts which would have been apparent to eighteenth-century readers. If we take note of contemporary law, they will become evident, even amusing, to us.

### **Frances Sheridan: *Memoirs of Miss Sidney Bidulph* (1761)**

Spender argues that Sheridan 'wrote about women's disillusionment with marriage - from firsthand experience', but fails to recognise that it is also part of her consideration of law.<sup>xxxiii</sup> The very language of the text reveals the legal context of marriage: Sidney's brother refers to 'a new treaty of marriage' between Sidney and Mr Arnold, not to a romantic attachment. Choice of marriage partner was one of many issues which people felt should be private but were in fact legal. The pious Sidney complains when her mother gives Mr Arnold 'permission to win' her: 'I am treated like a baby, that knows not what is fit for it to chuse or to reject'.<sup>xxxiv</sup> Women who argued for choice of marriage partners were asserting their individuality in opposition to a legal system which rarely acknowledged their separate identity and which valued property above sentiment. Sidney does not demand total autonomy but she resents being treated as property. As a virtuous woman making reasonable demands, her criticisms are all the more powerful. Sheridan does not utterly reject law but argues implicitly for enlightened use of it.

Lady Grimston, Mrs Vere's mother, is a rather unsympathetic spokesperson for traditional attitudes, teaching her daughter that nothing 'but parental authority was to guide [her] in [her] choice'(p.60). Her husband gives his consent to the daughter and she marries without her mother's knowledge because only his consent is legally necessary. If the consent of a mother or guardian was withheld unreasonably, a Judge or lord chancellor could redress the problem. Yet if the father's consent was withheld, there was no redress and any subsequent marriage would be void. If he could be proven not to be of sound mind, a Judge could intervene but the process was difficult and costly

and a daughter would not have been able to act herself but would have had to find a male relative or friend who was not of her father's opinion.

Mrs Vere tells Sidney that she married her beloved partly because of her 'aversion to the man...proposed to [her], and the rigours [she] had been threatened with, if [she] refused him'. Her father accepts her aversion but her mother forces him to disinherit her. It is unclear who performed Mrs Vere's marriage but it is questionable because they were 'married with the utmost privacy'(p.63). Banns were clearly not read and so a licence was presumably obtained, since her father consented. Sheridan does not endorse her behaviour completely, although her mother is shown to be unreasonable. Perhaps Sheridan is practical rather than overly conservative in not presenting her as a champion of love matches: 'if you find no disinclination, it is enough. I married for love, yet I was far from being happy'. She tells Sidney, 'Were there anything like aversion in your heart...it would be criminal in you to accept of him' but argues, 'if you marry him with nothing more than indifference, gratitude will soon produce love'(p.75). Indeed Sidney does come to love Mr Arnold.

If Sidney were perfectly happy after marrying to please her mother, we could assume that Sheridan was supporting contemporary laws and customs which denied women much control over their marital destiny. Yet in Sidney, Sheridan presents the seemingly unavoidable suffering of a woman who has behaved according to received notions of virtue. In marriage, as in her relationship with her mother, Sidney accepts obedience unquestioningly as a religious duty, 'I would rather he should treat me roughly...though it would frighten me, yet should I patiently conform to it'(p.119). Such attitudes both stem from the law and help to maintain it. Her subjection is not simply part of her character but a response to legally based moral imperatives. Her personal piety transcends the obedience required by law but her legal duty is not a matter of choice.

Sidney is an eighteenth-century Griselda, a type of suffering wronged womanhood, trying to rationalise her situation in terms of moral duty, believing the Griselda myth and articulating popular beliefs concerning ideal female behaviour. Chapon's *Letter to A New-Married Lady* (1777) provides an example of the pious ideals inculcated into young women throughout the century, which Sidney follows. If a husband proves adulterous, as Sidney's does, she recommends 'silent patience...uniform adherence to your duty, which must force his esteem, and may at length regain his heart.'<sup>xxxv</sup>

The unfaithful Arnold accuses Sidney of adultery and demands a separation, as if he were the injured party. He says, 'I raved, threatened, talked of fighting Faulkland, and locking up my wife'(p.242). Such threats are not simply the invention of Sheridan's imagination but were an unpleasantly real threat for eighteenth-century women. Sidney's husband declares, 'Our children remain with me'(p.132). We may be surprised that Sidney does not fight her husband's unjust actions but she has no legal right to contest them. Common law decreed that a woman's right to visit and even write to her children was at her husband's discretion. Lady Sarah Pennington was separated from her husband around 1758 and he refused to allow her to see or even write to her children. She wrote *An Unfortunate Mother's Advice to her Absent Daughters* (1761) partly to support herself but also to communicate with her daughters.

Equity put the child's interests first and if the mother or a third party petitioned, it would refuse a father custody if he was deemed unfit and appoint a guardian. In practice, this was only possible if a child had independent property, which enabled Equity to enforce its directions. Even widows could be refused custody, if the husband had willed it away from them, although they had guardianship of daughters under sixteen if no other guardian had been assigned in his will. Maintenance and child custody were decided by ecclesiastical judges, according to the wealth, rank and behaviour of the parties. By the 1820s church courts used their power over alimony to gain custody for the mother. Only in 1884 was a law passed which awarded maintenance and child custody to the successful petitioner in a divorce case, making divorce more accessible to women. Sidney's expulsion from the house is one of many issues which appear to be purely sentimental but whose ultimate importance is rooted in law.

Faulkland catches his wife committing adultery and accidentally shoots her when she rushes

between himself and Major Smyth: 'You see a man...whose life is forfeited to the law - My wife is dead - and by my hand'(p.389). As a rich and influential man, Faulkland would be more in danger for the supposed murder of Smyth. Indeed Warner does not mention the law in relation to Mrs Faulkland, simply saying, 'I could wish indeed that Jezebel of a wife had been cut off in the common way'. Warner treats Smyth's 'murder' as a serious legal issue, yet asserts that 'all mankind will acquit [Faulkland], though the law perhaps may not'(p.400), since he caught them committing adultery and Smyth fired first.

If a man killed his wife, he could be hanged. However, we must not underestimate the power of influential men over juries, who might accept a plea of manslaughter and demand only a token punishment, such as burning of the hand. Blackstone explains that if a woman killed her husband, it was regarded as 'petit treason', the term given to 'the breach of civil or ecclesiastical connexions, when coupled with murder'(IV,p.203). The essence of the crime does not consist, as one might expect, in the murder itself but in a challenge to patriarchy; wives and servants were tied to the man in civil law and so murder was petit treason. Porter comments that women were occasionally burned at the stake for murdering husbands up until 1789, although a kind hang-man might strangle them first.<sup>xxxvi</sup> Mrs Faulkland was not in fact killed and Smyth confesses the truth on his death-bed and so we do not learn whether or not there would have been a trial.

Spender argues that writers such as Sheridan 'had hinted at the frustration and the bitterness below the surface in the lives of many wives, but they *had* maintained the surface: Mary Wollstonecraft swept it all away'(p.261). There is a tendency to assume that Wollstonecraft is the great feminist avenging angel, achieving something none of her predecessors had attempted. Yet this view seriously underestimates the scope of earlier writers such as Sheridan, who also address the laws responsible for women's problems in marriage. Sheridan's attitudes are closer to those of conservative moral ideology, which may give an appearance of maintaining a 'surface', but presentations of the adulterous Arnold forcing Sidney to leave, threatening that she may never see her children again, do not give an impression of a writer afraid to reveal the darker side of marital experience.

Sheridan's personality and thus her style are different to Wollstonecraft's: she deals with law rather less bitterly but nonetheless clearly and very seriously. This treatment of law is part of women's literary heritage, a point which appears to have gone unrecognised by commentators. Clements recognises that Wollstonecraft 'appeals for reforms whose need the novel', in its generic sense, 'had already dramatized'.<sup>xxxvii</sup> Wollstonecraft's work is more self-consciously polemical than most but she is not the creator of a feminine tradition dealing with law in fiction, but part of a long established one, one in which Sheridan played her part.

### **Goldsmith: *The Vicar of Wakefield* (1766)**

Goldsmith presents in fictional form some of the most important marriage issues of his time, notably through Olivia, who is persuaded to elope by apparently 'honourable, though private proposals'. Her mother unsympathetically calls her a 'vile strumpet' and declares, 'Never...shall that vilest stain of our family again darken these harmless doors'.<sup>xxxviii</sup> Olivia's virtue is ultimately vindicated because the sham marriage was, unknown to her seducer Thornhill, legitimate.

Olivia admits, 'I knew that the ceremony of our marriage...was privately performed by a popish priest', realising that this was not recognised under English law and that the marriage was thus 'no way binding'. Her father, who is admittedly fanatical about monogamy, sees the moral rather than the legal reality, 'you are now his wife to all intents and purposes; nor can all the laws of man...lessen the force of that sacred connexion'. He is articulating the old view of ecclesiastical law which, before Hardwicke's Act, refused to invalidate existing marriages. However, she tells him that Thornhill 'has been married already, by the same priest, to six or eight wives more'(p.122) and so her marriage is null and void, even by ecclesiastical law.

Thornhill had 'commissioned [Jenkinson] to procure him a false licence and a false priest'(p.183) but Jenkinson had found a real priest and so the marriage is in fact legal. Marriage had

to be performed by a clergyman. Canon law lawyers, increasingly dealing with cases concerning legal succession to property, decided that this would be their standard of proof and so the legality of a marriage could depend on whether or not the parson was genuine; in this case, whether or not he is Protestant. Corrupt clergy and laymen dressing as clergy caused great concern during the eighteenth century;<sup>xxxix</sup> this concern is reflected in fiction.

Steeves comments on this narrative device as part of the resolution 'of the plot...brought about through a stretching of coincidence well beyond its permissible limits...Thornhill turns out, quite unintentionally, to be firmly and legally married to Olivia'.<sup>xl</sup> Such a happy conclusion may be unlikely but it is far from being as unrealistic as Steeves supposes. This becomes clear when one places the incident in its legal context, a context which would have been apparent to eighteenth-century readers. Goldsmith exploits the issue for dramatic effect, using the clergyman's legitimate rôle as a twist in the plot to save the essentially virtuous Olivia, but it also forms part of his consideration of marriage laws. Goldsmith provides yet another example of novelists combining fiction with discussion of legal topics. If we fail to take these specifically legal details into account, we will misunderstand the nature of his work and even basic aspects of plot which would have been evident to contemporary readers.

### Mary Hamilton: *Munster Village* (1778)

*Munster Village* provides a fictional forum for the presentation of a number of legal issues, notably for discussion of the nature of the marriage contract. There was considerable debate throughout the eighteenth century as to whether marriage was a sacrament or a contract. Silvia articulates popular confusion earlier in the century in Farquhar's *The Recruiting Officer* (1706): 'some make it a sacrament, others a convenience, and others make it a jest'(V,sc.i). This debate is reflected in Hamilton's novel.

Perhaps inevitably, Blackstone views marriage purely 'as a civil contract'(I,p.433). Miss Harris's father 'instilled notions into [her] of marriage being only a civil institution...a civil contract'. Marriage was clearly a contract, with marriage articles agreed between families, extended into a contract that could be one sheet or a scroll up to fifteen feet long for the aristocracy, signed by both parties and witnesses. Hamilton clearly recognises the contractual nature of marriage: 'I cannot help shuddering at a contract which nothing can dissolve but death'. Mr Harris rejects contemporary marriage laws, arguing: 'marriages among the Israelites were not attended with any religious ceremonies' except prayers.<sup>xli</sup> Hearne's *Calista* commented at the beginning of the century, 'that Ceremony is nothing but a piece of Formality, introduced...to bring Profit to the Church'.<sup>xlii</sup> Unfortunately, Mr Harris inculcates this emphasis on personal commitment rather than law into his daughter.

When her father dies, Miss Harris finds herself forsaken and penniless, helped only reluctantly by an aunt, 'as if she had been giving *alms* to a *stranger*'(p.91). She loves Bingley but his 'uncle, on whom he had considerable expectations, insisted on his marrying Lady Ann' and so he feels 'he ought to defer...another engagement until he could bring his uncle to hearken to it'. Her 'necessities increasing, relying entirely on the honor of [her] lover', Miss Harris goes to live at his country seat. She 'resigned [herself] to his wishes' before marriage, having 'his solemn promise he would ratify [their] engagement at the altar', considering him 'as my husband'(p.93). Bingley has to leave for a time and his letters 'miscarried'(p.96). Believing herself to be forsaken, after giving birth to a son, she leaves.

Bingley still loves her, referring to her as 'my lovely wife' and lamenting that he does not know 'where she is to make her every reparation'(p.96). When he hears the story, Munster contrives that Miss Harris should come to Burt's house so that Bingley can meet her. After mutual explanations, 'the [marriage] ceremony was immediately performed, and Miss Harris was introduced that very evening, as Lady Bingley'(p.146), symbolically accepted back into society in the form of the Munster household.

*Munster Village* lends itself to being interpreted within the broadly Puritan tradition of

dissent against marriage and divorce laws which spans the century. Mrs Lee declares, 'I am determined never to return to my husband', an adulterous gambler who instructs his servants to insult her and ruins them financially. She argues, 'Were my marriage even to be annulled, all the theologians in the world could not prove the least impiety in it'. She aligns herself with the radical arguments of Milton: 'Milton wrote *the doctrine and discipline of divorce*; wherein he proves, that a contrariety of mind' is a more important reason for 'divorce than adultery' if 'there be a mutual consent for separation'(p.50). Milton argued: 'indisposition, unfitness, or contrariety of mind, arising from a cause in nature unchangable, hindring and ever likely to hinder the main benefits of conjugall society' should be grounds for divorce, 'especially if there be no children, and that there be mutuall consent'.<sup>xliii</sup>

It is perhaps surprising to find such specific reference to an essay within a novel but it reveals Hamilton's intention to locate her novel within the framework of legal debate. Mrs Lee comments with acerbic humour, 'what error and disaster joined, reason and equity should disjoin', parodying the priests' declaration during the wedding ceremony: 'Those whom God hath joined together let no man put asunder'. For the Puritans, whose views Hamilton seems broadly in sympathy with, if consent to marriage ceased to be mutual, the couple were not deemed to have been joined by God but, in Lee's words, by 'error' and 'disaster'. As if standing in court as Wollstonecraft's Maria has to at the end of the century, she attacks law and defends her attitudes with reasoned 'evidence': 'the evidence of more than fourteen years experience'(p.51).

Lady Frances, the moral fulcrum of the novel, replies: 'though I cannot approve of your sentiments concerning divorce...your conduct in your family was exemplary'(p.54). It is difficult to establish Hamilton's personal view but it presumably approximates to that of Lady Frances, although she shows considerable sympathy for the views of women like Mrs Lee, a virtuous wife who feels driven to leave her rakish husband. Lady Frances seems to be articulating Hamilton's views when she declares, 'I honor the married state' as 'a union of hearts...Among all the civilized nations, this union hath been esteemed sacred and honorable'(p.55). Yet Hamilton presents marriages which embody not mutual devotion before God but financial arrangements and law, vehicles for masculine infidelity and cruelty. There may be a degree of tension between Hamilton's moral view of marriage and her intellectual assessment of the institution and its laws.

Hamilton approximates to the Puritan argument. The Puritans opposed the Anglican absolutist position that marriage was indissoluble, arguing that it was a civil covenant and that if consent was lacking, the couple could divorce. Wollstonecraft also appears to have some sympathy for the Puritan view of marriage, arguing in *Wrongs of Woman* (1798) that Venables's cruelty 'dissolved the tie, the fetters rather' of marriage.<sup>xliiv</sup> Godwin, perhaps not surprisingly, articulates a similar viewpoint: 'no ties ought to be imposed upon either party, preventing them from quitting the attachment, whenever their judgment directs them to quit it'.<sup>xlv</sup>

Protestant attitudes to marriage were partly shaped by a reaction against Catholic malpractice and a general distrust of Catholicism. Liberal or 'advanced' attitudes embody this critique and thus while some of Mrs Lee's comments may have shocked readers morally, the emphasis on individual affective bonding rather than contracts determined largely by the Catholic Church, may have found intellectual assent.

Hamilton presents a number of legally based problems which arise in marriage. The law required total obedience to a husband; in the marriage service, only the woman's vows require this: 'I...take thee...to my wedded husband...to love, cherish, and to obey'. Hamilton commented, 'from matrimonial decisions there is no appeal'(p.150). She presents a number of characters whose obedience, contrary to received moral opinion, has negative effects. The Duchess de Salis' 'obedience...only inflamed her husband's follies'(p.69). Mrs Trevors's excessive obedience 'put [her husband] out of all patience'. Sounding rather like Richardson's Charlotte Grandison earlier in the century, Miss Bingley advocates 'discordant concord'(p.104) in marriage. Miss Finlay answers in a similar tone, revelling in her friend's 'gaieté de coeur' and giving what amounts to a jocular battle cry to the male sex: 'Vive la bagatelle'. Both women reject the traditional rôle of wifely submission and are wary of marriage but do not reject it entirely, envisaging a different distribution of power

within marriage, through 'managing' men with 'dexterity'(p.107).

Hamilton also discusses the perennial problem of parental power over children's marriage choices: 'Few are the happy marriages contracted contrary to the consent of parents'(p.17); notably, she says 'few' as opposed to none. Miss Bingley, an attractive and independent character, rejects an arranged marriage with Mr Bennet, commenting amusingly but seriously that 'she would be very happy to accommodate herself to her aunt's wishes; but was not upon such a religious strain, and so desirous of canonization hereafter (if sufferings can make a saint) as to marry a man of his character'(pp.61-2). She is satirising the traditional female rôle model, 'saintly' in devotion to parents and ignoring personal feeling. Hamilton appears to endorse her behaviour: she is both rational and virtuous, 'promis[ing] never to marry any man [her aunt] disapproved of'(p.62). Hamilton proposes obedience to parents or guardians but not at the expense of personal integrity, appearing to endorse Miss Finlay's warning to Miss Bingley: 'do not...barter your happiness for splendour'(p.117).

When Miss Bingley falls in love, her aunt tells her lover, 'that he must *treat with her*' because her niece 'had nothing to say in regard to disposing of' herself. He replies, in a passionate but amusing diatribe against 'marriages, where [the] lawyer is the priest...the banns...are the indentures, land and ring...he had no notion of treating for a wife as he would buy stock of a broker...if she chose to give [them] her fortune, it *was well* - if not, [they] could live *without it*'. Miss Bingley, like Charlotte Grandison, lampoons her lover but is pleased by his devotion: 'lovers you know...are always philosophers'(p.103).

The novel ends with two women who have transgressed the accepted moral code being reinstated into society and rewarded with happy marriages: Miss Harris and Mrs Lee. While both women are fundamentally virtuous, moralists would no doubt not have approved of their behaviour. Mrs Lee is given the last 'speech' in the novel, declaiming against the marriage laws: 'the man only ventures the loss of a few temporary pleasures, the woman the loss of liberty, and almost the privilege of opinion...she becomes the subject of an arbitrary lord; even her children...are absolutely in his power, and the law countenances him in the use of it...a woman finds no redress for the indelicate abuses'(p.150) committed by a husband. Hamilton gives her novel an attractive romantic ending, but this does not negate her clear criticism of marriage laws; even in the midst of happiness, Mrs Lee is afraid to trust her lover enough to give him the legal power of a husband. The problem appears to be resolved but not before she has argued against marriage laws in a vein worthy of Wollstonecraft's heroines.

The novel's ending testifies to Hamilton's joint concerns: tying up the different strands of the plot in a satisfying way and making the reader think about the legal issues her novel explores. Hamilton is one of many novelists who found fiction and law complementary, fiction providing a means of discussing contemporary legal issues, and law providing plot complications or issues which would encourage readers to empathise with characters and which would render the novel's effect more immediate, presenting something which reflected readers' concerns and experiences.

### **Frances Burney: *Camilla* (1796)**

Steeves attacks *Camilla* as 'weakened by the author's ignorance of, or indifference to, some of the most obvious desiderata of realism'(p.220). Unfortunately, he does not define these 'desiderata'. His objection to the narrative's reliance on coincidence may be reasonable but there are surely other elements to realism, which he does not consider. He does not account, for example, for Burney's use of legal issues within the narrative. Perhaps the best example is Eugenia's abduction, which Steeves does not mention. Burney uses legal vocabulary and reveals detailed awareness of the relevant laws, an awareness which her readers would have shared, if only through accounts of abduction trials in pamphlets or newspapers. If 'realism' encompasses the presentation of situations which can arise in reality, the use of language appropriate to the situation described, together with reference to the relevant contemporary laws, which I would argue, Burney cannot be dismissed as entirely 'ignorant' or 'indifferent' to these factors. On the contrary, she reveals herself to be both

informed and interested in 'realistic' legal issues.

Eugenia is abducted by Bellamy. Melmond decides to pursue them and attempt to 'recover her before she arrived at Gretna Green'. Hardwicke's Act only applied to England and Wales; hence people crossed the border to Scotland and married at Gretna Green according to old common law, where the only requirement was the evidenced exchange of consent. Gretna Green marriages continued until Lord Brougham's Act in 1856, which required three weeks residence in Scotland prior to the marriage. Melmond is aware that Eugenia 'could not be married by force' and hopes that 'his presence might yet be in time to prevent persecution, or foul play', no doubt realising that in practice the law could not necessarily protect Eugenia. This harsh reality is expressed simply: 'Eugenia was married before she was overtaken'.<sup>xlvi</sup>

She is presented as 'a living picture of grief' but Melmond realises that 'if they were married, he could not unmarry them'(p.802). Eugenia's father demands to see her alone, threatening that if Bellamy refuses, 'he would apply no more for a meeting till he claimed it in a court of justice.' Yet he too realises that 'nothing could be done'(p.804). Both the reader and the characters are left in suspense as to 'How it had been effected, since force would be illegal'. Bellamy deceived Eugenia into accepting his protection in a well worn scenario, that of the woman being separated from her friends and accepting a man's protection and coach. Eugenia admits 'that force...was used'. Her father, clearly aware of his legal rights, 'required to hear nothing more, to establish a prosecution, and to seize her, publickly, from Bellamy'. Yet Eugenia resists, 'Solemn has been my vow! sacred I must hold it!'(p.805). Bellamy blackmailed Eugenia into marrying him by threatening suicide if she refused. We read, 'She uttered not one word' during the ceremony, being 'scarce alive' but she 'resisted not the eventful ring'(p.806).

Mr Tyrold urges her to take 'legal measures for procuring an immediate separation, and subsequent punishment'(p.806) but she feels bound by duty. Her virtuous mother also pleads with her 'to annul all [her] engagements' but Eugenia fears 'The horrible scenes I must go through in a public trial for such a purpose - the solemn vows I must set aside'(p.842). She explains to Camilla, 'though, upon certain avowals, the law might revoke my plighted faith, it could not abrogate the scruples of my conscience'(p.843).

Forcible marriage, when proven in court, was void. Blackstone explains: 'if any person, above the age of fourteen, unlawfully shall convey or *take away any woman child unmarried*...within the age of sixteen years, from the possession and against the will of the father, mother, guardians, or governors, he shall be imprisoned two years, or fined at the discretion of the justices: and if he deflowers such maid...or, without the consent of parents, contracts matrimony with her, *he* shall be imprisoned five years, or fined...and *she* shall forfeit all her lands to her next of kin, during the life of her said husband'(IV,pp.209-10) in order to prevent him from obtaining her property.

Perpetrators were not punished for abduction of the woman as such but effectively for unlawfully taking property. Blackstone explains that it must be proven 'that the woman has substance either real or personal, or is an heir apparent'. The prosecution also had to prove 'that she was taken away against her will' and 'that she was afterwards married, or defiled'. Even if she consented to 'the marriage or defilement...being won thereunto by flatteries after the taking,' it was still a felony, 'if the first taking were against her will'(IV,p.208).

Bellamy could clearly be prosecuted as Mr Tyrold wishes, but ultimately it is left to fiction to provide the justice Eugenia's principles will not permit her to seek: Bellamy accidentally kills himself while trying to murder her, providing a fictional resolution to the dialectic of virtue and its relation to legal rights. Eugenia's abduction is a familiar narrative strategy, a dramatic image of female vulnerability, but the vocabulary and the legal detail reveal it to be something more than this: her vulnerability is clearly derived from law.

Burney's treatment of the abduction is interesting because she sees Eugenia's position from a feminine and moral point of view, focusing on Eugenia and her feelings, as opposed to her father, on whom the law would focus its attention. Eugenia is an heiress and the law would concentrate on the theft of her as her father's 'property'. Burney rejects the patriarchal legal system, replacing its

values with femino-centric ones, presenting the abduction not as theft but as a personal injury. Burney is not 'ignorant' or 'indifferent' to elements of realism, as Steeves supposes, but we risk being so if we fail to take legal detail into account.

### **Wollstonecraft: *The Wrongs of Woman: or, Maria* (1798)**

Wollstonecraft's legal criticism manifests itself in a variety of fictional situations. Kelly describes *Wrongs of Woman* as a 'vehicle for Revolutionary feminism', arguing pertinently: 'The English Jacobin novelists also tried to improve their fiction by including obviously factual material, especially on social and economic conditions and on legal issues. Wollstonecraft may have used sources such as *The Newgate Calendar* and Bladon's *Trials for Adultery...Maria* includes much factual material...on the legal situation of women'.<sup>xlvii</sup> Yet he does not discuss legal issues or why it was important to Wollstonecraft to be so accurate. She expects her readers to be aware of legal detail and so she has to be accurate in order to have her legal and social criticism taken seriously. Law is perhaps beyond the scope of Kelly's interests but since he recognises its presence in fiction, it is unfortunate that he does not consider its rôle or its presence in fiction other than the obvious Jacobin work.

Wollstonecraft's treatment of legal issues, by its very nature, demands detailed consideration of law, which this chapter attempts to give. In the Preface to *Wrongs of Woman*, she argues, 'I could have made the incidents more dramatic, would I have sacrificed my main object, the desire of exhibiting the misery and oppression, peculiar to women, that arise out of the partial laws and customs of society'(p.59), demanding that we take the legal context into account. Wollstonecraft considers the very basis of marriage and families in specific legal terms.

In her essay *Vindication of the Rights of Woman* (1792), Wollstonecraft discusses the ever popular issue of choice of marriage partner: 'it will be a long time, I fear, before the world will be so far enlightened that parents...shall allow [children] to choose companions for life themselves'.<sup>xlviii</sup> In *Mary, A Fiction* (1787), she presents a fictional example of this argument. Mary is an heiress but 'A part of the estate she was to inherit had been litigated'. The 'person who still carried on a Chancery suit' has a son and so the fathers, 'in order to settle [the suit] amicably...one day, over a bottle, determined to quash it by a marriage, and, by uniting the two estates, to preclude all farther inquiries into the merits of their different claims'.<sup>xlix</sup> The fathers treat the marriage as a way of resolving a legal battle; an issue they can decide simply 'over a bottle', a further example of apparent novelistic excess actually exposing legal reality. Chapone criticised such marriages earlier in the century as 'mere Smithfield bargains, so much ready money for so much land, and my daughter flung in into the bargain'.<sup>1</sup>

In *Wrongs of Woman* Wollstonecraft describes a woman 'who marries one man, with a heart and imagination devoted to another' as 'an object of pity or contempt, when thus sacrilegiously violating the purity of her own feelings'. Her assertion that feeling is more important than duty is dangerous, as is the word 'sacrilegiously'. She even argues in opposition to customary morality that 'it is as indelicate, when she is indifferent' because 'a heartless conduct is the contrary of virtuous'. Wollstonecraft denounced such marriages as 'a mere affair of barter'(p.114), describing 'a girl's coming out' in *Rights of Woman* as bringing 'to market a marriageable miss'(p.289).

Wollstonecraft was deeply aware of the marriage laws which supported parents' property rights as opposed to individuals' affective rights. For women, this lack of rights extended into marriage, a parallel Wollstonecraft recognises, arguing in *Rights of Woman* that both parents and husbands 'constantly endeavor to settle that power on a Divine right which will not bear the investigation of reason'(p.272). She describes marriage as 'a system of slavery'(p.117). Kelly infers from references to foreign slaves that 'such oppression is somehow "not British"'(p.217). He misses the point: sadly, it is decidedly 'British'; hence the wives of the supposedly civilised English find an imaginative parallel in foreign slaves.

Wollstonecraft commented sarcastically in *Rights of Woman*, 'The *divine right* of husbands, like the divine right of kings, may, it is to be hoped, in this enlightened age, be contested without

danger'(p.127). The legal concept of woman as subject to her 'sovereign' husband was fundamental to eighteenth-century life and must be borne in mind when we consider contemporary literature or we will fail to understand such criticisms fully. Hobbes argued that obedience was due to the government, for the stability and protection of society. Many Tories expanded the argument and thus argued that a woman's obedience to her husband should be unconditional. Locke suggested that a wife's subordination was part of a contract, which could be broken by tyrannical behaviour on the part of her husband, just as Whigs argued that subjects could resist their king if he violated the contract by tyrannical behaviour. Astell warned that 'Covenants betwixt Husband and Wife, like Laws in an Arbitrary Government, are of little Force, the Will of the Sovereign is all'.<sup>ii</sup>

Astell argued in *Reflections Upon Marriage* (1706) that men hypocritically 'practise that Arbitrary Dominion in their Families, which they abhor and exclaim against in the State'(p.76). Wollstonecraft may have had Revolutionary leanings but Astell was torn between her Tory principles and her sense of the injustices associated with female subordination to the 'sovereign' husband. Yet even she argues: 'I don't say that Tyranny *ought*, but we find in *Fact*, that it provokes the Oppress'd to throw off even a Lawful Yoke that sits too heavy'(p.131).

Maria states 'Marriage had bastilled me for life'(p.115). The topical reference heightens rather than distances the horror of her situation: the Bastille was a byword for corrupt French power of a kind the English wanted to believe was not possible in England. Contrary to Kelly's argument, Maria is arguing that the seemingly limitless power of the state embodied by the Bastille is not only possible in England but actual, presented not as a political prison but in terms of restrictive laws. The Bastille is an effective image to denote the hopelessness of Maria's situation: there is no escape from her husband's power during marriage.

Wollstonecraft admitted in *Rights of Woman* that women 'are provided with food and raiment, for which they neither toil nor spin' but felt that they were 'Confined...in cages' in 'mock majesty'(p.146). This was the legal basis of marriage in the middle and upper classes: women were required to be decorative and to fulfil domestic duties and men, in return, provided for them. The analogy with servants is evident: they have no autonomy and in return for domestic duties, they are fed and given pin-money, akin symbolically to wages. The marriage ceremony reflects this contract: if the *Book of Common Prayer* (1552) is used, the man still declares to the woman in the marriage ceremony, 'with all my worldly goods I thee endow'. The woman is asked by the priest, 'Wilt thou obey him, and serve him' as her part of the contract.

Mandeville exposed satirically the legal realities lurking behind courtship rituals in *The Virgin Unmask'd* (1709): the woman, 'with abundance of Coyness sits in State, insults over the Man...because she designs to make him her Master, and give him all she has in the World. The Man...with the most profound Veneration to his Idol, begs on his Knees, that a certain modest Petition may be granted...that the Person, to whom he pays his Devotion, would be so kind, as to oblige herself solemnly, before Witnesses, upon the Penalty of being damn'd, to be his Slave as long as she lives, unless he should happen to die before her'(p.30).

Maria's landlady recognises the contractual terms of marriage: 'Women must be submissive...Who had they to maintain them, but their husbands?(p.130). Astell argued with similar cynicism nearly a century earlier in *Reflections Upon Marriage* that women 'are for the most part Wise enough to Love their Chains'(p.86). Women were kept in a state of financial dependence by law, in order to support masculine power, which had its domestic root in marriage. Maria's father is typical in that his 'orders were not to be disputed' for he had 'absolute authority' and 'was to be instantaneously obeyed, especially by [her] mother'(p.95).

Wollstonecraft argued in *Rights of Woman* that in order for a woman to be 'really virtuous and useful' and to 'discharge her civil duties', she must not 'want, [or lack] individually, the protection of civil laws'(p.259). The key word here is 'individually'. The notion that a woman ought to have separate legal status from her husband and not simply do his bidding was daring, directly challenging the legal view of women and potentially subversive.

Blackstone explains: 'By marriage, the husband and wife are one person in law'. Thus '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'(I,p.442). Wollstonecraft commented: 'The laws respecting woman...make an absurd unit of a man and his wife; and...she is reduced to a mere cipher'(p.257). We may feel that such comments are a little extreme, or somewhat jaundiced, but they are an accurate representation of the 'laws which make a nonentity of a wife'(p.298). This concept was criticised throughout the century. Farquhar's Mr Sullen comments bitterly in *Beaux Stratagem* (1707), 'One flesh! rather two carcasses join'd unnaturally' (III,sc.iii). The situation had not improved by the nineteenth century: J.S.Mill explained, 'The two are called "one person in law", for the purpose of inferring that whatever is hers is his, but the parallel inference is never drawn that whatever is his is hers.'<sup>lii</sup>

Since wives had no separate legal identity, injuries to the wife could be considered as injuries to the husband and so legal action had to be brought in the names of both husband and wife. Naturally this meant that a woman had little legal redress against her husband but would have to ask a male relative or friend to take out an action on her behalf. If the ill-treatment was severe and the husband was deprived of his wife's 'company and assistance', the law allowed him a separate action, to gain 'satisfaction in damages'(III,p.140). One may compare the offence of beating or confining a man's servant so that he cannot 'perform his work', based on 'the property which the master has by his contract acquired in the labour of the servant'(pp.141-3), which has uncomfortable parallels with the marriage contract.

Blackstone declares, with somewhat complacent paternalism, that the law is not only fair to women but may positively discriminate in their favour: 'So great a favourite is the female sex of the laws of England' that 'even the disabilities which the wife lies under, are for the most part', although he admits not always, 'intended for her protection and benefit'(I,p.445).

Wollstonecraft presents a response to such attitudes in her fiction, which dramatises the extent of women's legal disabilities, particularly in marriage. Twentieth-century readers may assume that Maria could leave Venables but her sufferings are insufficient for divorce. She could sue for separation on grounds of cruelty but the legal definition of cruelty could be ambiguous. Sir William Scott argued in 1790 that 'reasonable apprehension of bodily hurt', not mental suffering, constituted 'legal cruelty'.<sup>liii</sup>

Blackstone accounts for the difficulty in obtaining divorce by arguing: 'if divorces were allowed to depend upon a matter within the power of either of the parties, they would probably be extremely frequent'. This was apparently a problem when divorces were granted for canonical impediments, 'on the mere confession of the parties'(I,p.441). The issue of adultery and divorce varied according to gender. A woman seeking a divorce was seen as analogous to a servant trying to dissolve his bond with his master. John Dove argued in 1601: 'As when a servant runneth from his master the chaine of bondage doth pursue him...so when a woman leaveth her husband, the lawe of matrimony is as a chaine to draw her back againe to her husband.'<sup>liiv</sup> Neither social attitudes, nor the law which helped to form them, had changed substantially by the eighteenth century.

This is clear from the continuing attitude to conjugal rights. Maria argues that 'personal intimacy without affection' is 'the most degrading, as well as the most painful state in which a woman of any taste...could be placed', commenting that her 'husband's fondness for women was of the grossest...the most brutal nature'. As she realises bitterly, she is 'a victim to the prejudices of mankind, who have made women the property of their husbands'(p.109). This is a clear reference to the law which, as Blackstone explains, determines that 'generally during the coverture [sexual] access of the husband shall be presumed'(I,p.457). Defoe was one of the few people who accepted that rape, a term denoting illegal sexual intercourse rather than legal conjugal relations, was possible within marriage, thus questioning the notion of absolute conjugal rights within the marriage contract, for example in *Conjugal Lewdness* (1727). Later in the century, Scott criticised the legal designation of wives as sexual property. In *Millenium Hall* (1762) Mrs Morgan 'suffered less uneasiness from [her husband's] ill-humour, brutal as it was, than from his nauseous fondness' but, seeing 'no means of redress...thought it best to suffer without complaint'.<sup>lv</sup>

Maria is painfully aware that there is no legal remedy for her situation. Even if she leaves Venables and suffers all the attendant difficulties, she remains his sexual 'property'. A woman did

not have the legal right to refuse conjugal relations, even with an estranged husband, until 1882. Although the law did not state that a man could rape his wife, it was not a crime and so there was no reason for him not to. Maria does what one assumes many women did: 'compassion, and the fear of insulting his supposed feelings...made me dissemble, and do violence to my delicacy'(p.113). Venables considers raping Maria but, fortunately for her, he does not insist on his conjugal rights. Wollstonecraft does not dwell on this scene: rape is the ultimate threat to women and its very mention is sufficient for female readers to empathise with Maria and to resent laws which allow women to suffer in this way and provide no redress. The scene inevitably makes readers think about women's position in marriage and the attendant injustices.

Maria's 'hourly aversion'(p.143) to Venables arises after marriage. Aversion is a legal term which would have been immediately recognisable to contemporary readers as grounds for refusing marriage; Maria presents it as grounds for terminating the marriage contract. Wollstonecraft exposes a major problem for women: they had the right to refuse marriage but if they married someone they did not know very well or he behaved differently after marriage, they had no protection and no escape. Maria believed that she loved Venables but she married him primarily because her uncle approved and family life was intolerable, thinking 'more of obtaining [her] freedom, than of [her] lover'(p.104).

Violent rape was not condoned but, until 1991, a woman was deemed to have given her husband rights over her body by accepting the marriage contract. We may accuse Wollstonecraft of being bitter and perhaps exaggerating women's legal disabilities but, on closer examination of the law, it becomes clear that, far from being exaggerated, these horrifying scenes are painfully realistic and simply reflect legal realities.

Wollstonecraft criticises 'the moralists, who insist that women ought to, and can love their husbands, because it is their duty'(p.114), not to mention a legal obligation. Milton stressed the importance of conjugal rights in the seventeenth century in *Paradise Lost IV* (1667):

'nor Eve the rites

Mysterious of connubial love refus'd'(l.742-3).

Maria's description of Venables's 'gross manners, and loveless familiarity'(p.114) is very different to Milton's ideal presentation of marital love, with no question of brutality, but both situations are based on the legal assumption that when a woman marries, the contract makes her husband's property.

Wollstonecraft refuted this concept angrily: 'we cannot, without depraving our minds, endeavour to please a lover or husband, but in proportion as he pleases us.'(p.114). Her position is diametrically opposed to law, which reflected the preoccupations of the property owning classes, who often assumed that a daughter would marry to aggrandize the family. Writers argue the importance of women's feelings throughout the century, from Astell and Hearne to Richardson and subsequently Hays and Wollstonecraft. Women's feelings were regarded as potentially subversive because they could thwart arranged marriages and the related property transactions. Any argument for the importance of such feelings, even within a broadly conservative framework, as in Richardson, involved questioning, and indeed challenging, law and custom. If we do not bear this in mind, we will perhaps fail to appreciate how daring their writing was.

Marital problems were only recognised by the law when extreme and even then, redress was doubtful. One matrimonial cause settled in court was the 'restitution of conjugal rights', meaning cohabitation. Husbands or wives could sue if their partner was 'guilty of the injury of subtraction' or lived separately for no good reason, that is, for reasons other than cruelty or adultery. Blackstone explains that the ecclesiastical courts could 'compel' a couple 'to come together again, if either party [was] weak enough to desire it, contrary to the inclination of the other'(III,p.94).

Since there is no legal separation, Venables could claim that he has been deserted and could gain a court order to force Maria to return. If she refused, he could legally seize her by force. It is perhaps for this reason that Maria declares before Mr S as witness, 'as solemnly as I took his name, I now abjure it'(p.120). Taking a husband's name was the objective correlative of becoming his property. It is worth noting that Maria took her marriage vow 'solemnly', forestalling criticism that

she did not take her legal obligations seriously. 'Abjure' is a legal term, emphasising the legal context to her actions, a context she is clearly deeply conscious of but which is generally ignored by twentieth-century commentators. Maria is making a public statement of independence, the nearest thing she can do to obtaining a separation, something akin to unofficial separation customs but which she controls, without her husband's consent.

Maria knows her legal rights but, simply wanting to escape Venables, she 'resolved to assume [her] own name immediately'(p.125), asserting her individuality and thus opposing both law and custom. Since she does not seek a full legal separation, she 'demanded no maintenance'(p.143). Before her affair with Darnford, she could have sued Venables for alimony but it would have been costly. A woman was not granted alimony if she went to live with her lover. If the husband refused to pay her alimony or 'estovers' for any other reason, she could sue in an ecclesiastical court which would assign maintenance. The husband would be excommunicated if he continued to refuse payment and a writ at common law could be issued to claim her rightful allowance.

Venables's rights over Maria remain unchanged even after she has left him because there is no legal separation. He has shown himself to be clearly aware of these rights. He has committed barely legal acts to extort money from her but is careful not to be violent, since this could constitute grounds for separation and he would lose control over money she obtained in the future: 'he had determined not to give [her] any reason for saying that he used violence'(p.123).

*Wrongs of Woman* is a presentation of various marital evils which Wollstonecraft regards as warranting divorce. Her work is part of debate concerning divorce laws which presents itself throughout the seventeenth and eighteenth centuries. Common law, which viewed marriage as sacred, did not allow divorce for any reason if the cause arose after marriage, although Blackstone notes correctly that scripture allows divorce for adultery.

Wollstonecraft criticises oppressive marriage laws and demands freedom in the form of divorce. There were two forms of divorce: total and partial. Total divorce was granted for canonical impediments existing prior to the marriage, for example, consanguinity. It could only be granted during the lifetime of the couple, the marriage was declared void, and the couple had to separate. Any children would be deemed illegitimate. The Catholic Church allowed partial divorce, or separation, for adultery, apostasy or heresy but Protestant law abolished this in the late sixteenth century. Blackstone explains that partial divorce is granted when it 'becomes improper or impossible for the parties to live together'(I,p.441), for example, due to intolerable bad temper, 'intolerable cruelty, adultery, a perpetual disease'(III,p.94). Written deeds of separation, with bonds to be forfeited if the terms of the agreement were broken, were the best way to separate but were inevitably expensive.

It is important to place Wollstonecraft's work within a tradition of dissent rather than assuming perhaps that her controversial arguments were born primarily out of her relationship with Godwin. The divorce laws were still being debated at the end of the eighteenth century and continued to be so well into the nineteenth. Contemporary readers would have identified Wollstonecraft's work within this framework; we need to do so too.

The only truly legal form of divorce was one on grounds of adultery, by act of Parliament, thus enabling both parties to remarry, although the woman was not allowed to marry her lover. This legal anomaly, created around 1700 and not abolished until 1857, allowed the rich to divorce when it was otherwise illegal, enabling rich men to beget lawful heirs in a second marriage, which was previously forbidden by the 1604 canons. Yet records show that women were sometimes successful in divorce suits. *The Gentleman's Magazine* (1747) recounts the case of Elizabeth Keil, who divorced her husband for committing adultery and incest with her sister. The *Annual Register*, 11th December, 1767, states that a woman sued her husband for divorce on the grounds of repeated cruelty, adultery, and giving her venereal disease.<sup>vi</sup> The 1857 Divorce Act made divorce more readily available for men, stipulating that a woman could be divorced for adultery. However, a woman had to prove cruelty, desertion, bigamy, rape, sodomy or bestiality to divorce her husband. Not until 1923 were the same grounds for divorce settled on both sexes, by the New Matrimonial Causes Act.

Kelly comments on the trial in *Wrongs of Woman*: 'Trials occur in many texts of the Revolutionary decade, given additional significance by French Revolutionary tribunals and British treason trials of the mid-1790s'(p.219). The political context is interesting but the trial is clearly not political: Darnford is on trial for taking Venables's wife. Wollstonecraft puts the marriage and divorce laws themselves on trial. Kelly fails to take into account public interest in trials throughout the century, reflected in texts from *Moll Flanders* (1722) and *Rash Resolve* (1724) to *Nature and Art* (1796).

Maria uses the trial as a forum for criticising marriage laws as a whole: 'if laws exist, made by the strong to oppress the weak, I appeal to my own sense of justice, and...will not live with the individual, who has violated every moral obligation which binds man to man'. She states bravely, 'I claim then a divorce' and appeals to the jury, 'whose private judgment must be allowed to modify laws, that must be unjust, because definite rules can never apply to indefinite circumstances'(p.144). The Judge, apparently representing common law, retorts, 'Too many restrictions could not be thrown in the way of divorces, if we wished to maintain the sanctity of marriage'. However, he accepts that Maria's wrongful imprisonment 'might perhaps entitle the lady [in another court] to a sentence of separation from bed and board, during the joint lives of the parties'(p.145), the 'other' court being an ecclesiastical one, as eighteenth-century readers would have known.

Venables could divorce Maria for adultery but his adultery is insufficient grounds for divorce. This inequality was criticised throughout the century. Astell argued in *Reflections Upon Marriage* (1706) that divorce laws favour men: 'if the Matrimonial Yoke be grievous, neither Law nor Custom afford [a woman] that redress which a Man obtains'(p.101). According to the *Book of Common Prayer* (1552) the vows of fidelity are binding for both parties. The minister still asks the man during the wedding ceremony, 'Wilt thou...forsaking all other, keep thee only unto her'. Maria states 'I can prove repeated infidelities which I overlooked or pardoned.' She even has legal proof, 'Witnesses are not wanting to establish these facts'(p.142) and she maintains her husband's illegitimate child. She claims, 'Various are the cases, in which a woman ought to separate herself from her husband'(p.143). Interestingly, she does not simply argue that separation should be available but indicates that there is a moral imperative to separate.

Maria is painfully aware that if a man leaves his wife, 'He, with lordly dignity, has shaken off[f] a clog' but a woman leaving her husband 'is despised and shunned'(p.117). The situation had not improved since the beginning of the century when Astell argued in *Reflections Upon Marriage* that separation exposed women to 'Injuries from the Bad' and contempt or at best 'pity of the Good, and the just Censure of all'(p.92). Venables's lawyer threatens Maria that if she does not give him her fortune, which is his real aim, he will 'claim the child'(p.134). This may appear unbelievably cruel but eighteenth-century readers would have realised that a woman 'cannot drive an unfaithful husband from his house, nor separate, or tear, his children from him, however culpable he may be'(p.116); he is simply exercising his legal rights.

Even if Venables's early behaviour would not entitle Maria to seek divorce, her wrongful imprisonment would seem sufficient for separation. Blackstone explains: 'Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house'(III,p.127). However, he notes: 'the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehaviour'(I,p.445), which could be interpreted as including keeping money from him. Blackstone explains that because the law regarded a man as responsible for his wife's behaviour, it 'thought it reasonable to entrust him with [the] power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children' on the grounds of insanity, or what he refers to somewhat ambiguously as 'other prudential reasons'(III,p.132). Unlawful imprisonment arose only when the person responsible for the imprisonment had insufficient authority. Venables could imprison Maria at home lawfully but imprisoning wives in madhouses was more problematic, unless the necessary authority had been obtained, possibly bought, from the courts or a warrant had been given by an officer of the law who had power to imprison people.

The issue of 'domestic chastisement', be it by incarceration or beating, was debated by both

legal and literary writers throughout the seventeenth century and continued to cause concern into the nineteenth century. Since the late seventeenth century, courts regarded chastisement as admonition or confinement to the house, not physical punishment. This power was, according to Blackstone, 'confined within reasonable bounds', the husband being 'prohibited from using any violence'(I,p.444). Yet in 1782 Sir Francis Buller made the famous and outrageous ruling that a husband could beat his wife if the stick was no thicker than his thumb. He was amusingly named Judge Thumb thereafter but some took the ruling seriously. Beattie notes 'there was still a great deal of wife beating' in the eighteenth century.<sup>lvii</sup> Marder notes that mid nineteenth-century criminal records show on average nearly 1,500 cases a year of aggravated assault on wives.<sup>lviii</sup>

Blackstone reminds us that, particularly in the lower classes, men 'still claim and exert their antient privilege'(I,p.445) according to common law. He explains that in offences 'directly against the person of the wife', there might not be a witness and so a woman could 'be a witness against...her husband'(p.443). Women could prosecute their husbands for assault and battery, threatening or attempting grievous bodily harm. They could ask a Justice to bind husbands over to keep the peace or ask King's Bench for a *habeas corpus* writ. Rich women with separate estates could appeal to Chancery for protection in the form of a writ of *supplicavit*. Venables taunts Maria that '[she] could not swear the peace against him' because she 'was not afraid of [her] life! - he had never struck [her]'(p.120). Yet he can threaten her, lock her up, consider raping her and defraud her of money with impunity.

Maria comments, 'To force me to give my fortune, I was imprisoned'(p.144). If this direct threat fails to force her to sign over her fortune to him, Venables can simply pay to have Maria certified as insane, enabling him to keep her imprisoned and to enjoy her money freely. Theoretically, the law protected people from wrongful imprisonment, yet several so called 'madhouses' seem to have been run by unprincipled people who cared little for the law. In 1774 an act was passed to insist that all madhouse-keepers had a licence, kept records and only accepted patients with a doctor's order.

Realising that her desperation and the drugs may make her appear insane, Maria resolves: 'I will preserve my senses; and convince even [them]...that my intellects have never been disturbed'. She seems to be hoping that the law will be respected and that they will release her if she can prove herself to be sane. However, her captors have deliberately organised events so that she will not be able to find legal protection, by declaring 'that no person, excepting the physician appointed by her family'(p.63) should see her. They fabricate a story of hereditary mental illness with long lucid intervals. If Venables paid a doctor to declare that she was insane, Maria would have little hope of release. Maria cannot benefit from legal protection because no-one will listen to her. Husbands were rarely prosecuted for imprisoning wives and, while actual imprisonments were rare, the threat was not uncommon.

Figs argues: 'Wollstonecraft's prison house has become the world of the repressed subconscious', interpreting it as 'an image of male power in its sinister aspect, threatening and oppressive'.<sup>lix</sup> She is right to explore the symbolism of the prison but it is unfortunate that she does not recognise its rôle as a representation of reality; the image is not simply one of Gothic horror but a fictional consideration of a real, albeit distant threat and an exposé of the legal system which allowed it.

Kelly notes: 'to achieve accuracy in her novel's madhouse scenes Wollstonecraft visited Bedlam Hospital in February 1797'(p.211). Yet he refers to Maria's persecutions as 'adventures', which dramatise her 'superiority of self...over society, state and social convention'(p.217). The word 'adventure' does not convey the reality of what Wollstonecraft is presenting: imprisonment is an image, although Kelly fails to note its obvious use in dramatising women's oppression, but it was also a potential reality for women.

Munzo Rogers argues that Maria is not 'justified in considering adultery until [Venables] actually imprisons her in a madhouse'.<sup>lx</sup> Rogers's terms of judgement are unclear: she does not define whether they are moral or legal. Neither law nor public opinion would believe Maria to be justified in committing adultery: she could leave but not live with another man. Rogers appears to

be judging in terms of what we may regard broadly as 'moral' justification in twentieth-century terms but our values do not translate neatly into the eighteenth century. Hence the need to study eighteenth-century law and the social conditions it engendered.

Given Wollstonecraft's clear concern with legal issues, it is more than surprising that commentators do not consider these issues in detail. Tompkins describes *Wrongs of Woman* as 'a novel of propaganda', whose 'plot is conditioned by the abuses it sets out to expose', commenting that 'matrimonial despotism' is 'the greatest of the wrongs of women'(p.315) but she fails to explain the laws which made such despotism possible.

Steeves argues that woman's 'legal incapacities, her economic helplessness...were forced into recognition and discussion principally through the efforts of women writers' and recognises that 'remedies followed slowly, for public opinion on these problems was not greatly altered before the middle of the next century'(pp.100-1). He assumes increasing resentment on the part of women writers regarding women's social position. Yet in fact opposition to social and legal inequities which determined women's position is clearly present in Aphra Behn and Astell at the beginning of the century and can be seen throughout the period. Steeves describes the novel as 'a social document in the dress of fiction'(p.310) and recognises that it presents 'the helplessness to which laws and institutions have condemned'(p.312) Maria but he does not address the laws that Wollstonecraft was at such pains to criticise. Wollstonecraft's work is steeped in legal vocabulary and references; if we do not engage with this legal detail, we cannot hope to understand one of the most vital elements of her work.

Atrocities such as those presented in *Wrongs of Woman* may not have been common but the law protected the perpetrators' rights more fully than those of potential victims; a fact recognised by many eighteenth-century wives who lived in fear of their husbands' threats. Viewed in this context, fictional imprisonments cease to shock our ideas of credibility. It is the reality of the eighteenth century which shocks, rather than the fiction which is born out of it. Hays was not alone in arguing that 'not nature, but the barbarous and accursed laws of society, have denied' women independence and thus basic human rights.<sup>lxi</sup> Eighteenth-century fiction is in part an exploration of these legal issues.

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