

II. Law, Property and Finance in Eighteenth-Century Fiction.

Economic issues and their place in fiction have been well documented elsewhere, at least in the case of well known writers such as Defoe. Yet critical commentary has been lacking in any attempt to deal effectively with the legal background to financial transactions. Eighteenth-century writers reveal a clear awareness that the law determines their financial dealings. The very language of the texts demonstrates that we are often intended to view narrative motifs in a legalistic manner.

Twentieth-century commentators tend to react to the world of finance as an entity in itself, a view which is facilitated by the fact that it has its own language. I seek to draw attention to the largely ignored legal vocabulary and to demonstrate its importance in understanding situations which would have been apparent in the eighteenth century but which tend to be misunderstood or underestimated in the twentieth due to lack of consideration of the contemporary legal context.

Defoe: *Moll Flanders* (1722) and *Roxana* (1724)

Defoe's interest in economic issues is widely documented.ⁱ Yet his detailed consideration of the legal context behind financial relations has received little if any consideration. James comments on 'the extremely high incidence of monetary references' in *Roxana* but views it simply as a reflection of the heroine's character. He argues rightly that they underline her 'obsessive fascination with wealth and with the power and status that accompany it' but takes no account of the legal background;ⁱⁱ *Roxana* represents in microcosm the primary interest embodied in contemporary law: concern with protecting property. Blackstone noted: 'There is nothing which so generally strikes the imagination and engages the affections of mankind, as the right of property'.ⁱⁱⁱ If *Roxana* were male, her interest in commerce would be unremarkable.

The economic hardships facing women provide the backdrop for *Moll Flanders* and *Roxana*. If one looks at writings such as Radcliffe's *The Female Advocate* (1799), which is based on actual legal and social conditions which have not changed during the century, it becomes clear that novelists such as Defoe are being sadly realistic in their treatment of women's position. *The Female Advocate* is a polemical essay concerning the virtual impossibility of women finding work, controlling their money and thus living independently. Radcliffe attacks the male monopoly on work, clearly regarding the androcentric legal system as responsible, demanding rhetorically, 'What statute is there, which grants that men alone shall live, and women scarcely exist?'.^{iv}

In *Moll Flanders* and *Roxana* Defoe explores the problem of maintaining both legitimate and illegitimate offspring, assuming that the reader will recognise the relevant laws. The law regarded the family as an economic unit, with the father responsible for providing the necessities of life. Blackstone explains, 'Marriage...ascertains and makes known the person who is bound to fulfil this obligation'. To help defray the cost, common law decreed that a man gained absolute ownership or control of his wife's property in marriage. However, 'in promiscuous and illicit conjunctions, the father is unknown' and 'shame...and the rigor of laws' may stifle maternal feelings, even if the woman can support her children, and Blackstone admits 'the generality wants ability'(I,p.447).

Moll is fortunate in that one of her 'gentlemen' says he will 'take due care of' their illegitimate child. She considers 'the Danger of being one time or other left with [the child]...without a Maintenance to support him' and 'resolv'd to leave'.^v At times she even steals to support her children. *Roxana* has to sell everything she possesses to maintain her children, fearing 'to have [them] starve before [her] Face'.^{vi} Defoe assumes we are aware that her legitimate children have a legal right to maintenance from their father but they have no means to ensure that their rights are recognised.

If a woman left her husband for good cause, or he deserted her and she had insufficient money, she became his agent of necessity and could invoke the law of agency and use his credit for necessities. However, he could rebut this, claiming she had left him for no good reason, had committed adultery, been too extravagant, or had independent means. Wollstonecraft's Maria comments that she 'despised this paltry privilege of a wife, which can only be of use to the vicious

or inconsiderate', refusing to 'contract debts, which I had too much reason to fear would never be paid'.^{vii}

Tradesmen would be loth to risk a lawsuit with the husband and it was inevitably difficult for the poor: it would not help Moll or Roxana. A woman could also appeal to the poor law, which had recognised parental responsibility to maintain children since 1601, although it did not recognise the husband's responsibility to support wives until 1834, when the Poor Relief Act decreed that relief given to a wife should be regarded as a loan, recoverable from the husband. However, poor law guardians could refuse to act, in which case a woman had no recourse.

Ironically, the prince is more honourable towards Roxana's illegitimate child than her husband is to their legitimate ones. Perhaps to reflect this, Defoe implicitly refers to well known legal concepts relating to legitimate children. The law was careful to ensure that a child had been born alive. Blackstone explains that crying was often regarded as 'the *strongest* evidence'(II,p.127) but not the only proof. Roxana decides 'that for the reality of the Child that should be born, his Highness...should...be present in the Room all the Time; so that he would need no Witnesses on that Account'(p.113).

Legitimate heirs generally fared far better than their illegitimate contemporaries in inheritance matters. The merchant argues in favour of marriage that 'there cou'd be no legal Claim of Estates by Inheritance, but by Children born in Wedlock'(p.191). He stresses that their present situation 'is unkind to the Child that is yet unborn; who, if we marry, will come into the World with Advantage enough, but if not, is ruin'd before it is born'(p.196). Blackstone explains, 'if a child be begotten while the parents are single, and they...make an early reparation for the offence, by marrying within a few months after'(I,p.455), the child was deemed legitimate.

An illegitimate child was deprived of family pride, since he could not inherit his father's name. Such a child would be unable to inherit or produce lawful heirs. Blackstone admits that the law is 'with regard to the innocent offspring of his parents' crimes...odious, unjust'(I,p.459). Roxana herself seems to refer to illegitimacy only when she sees a possible advantage in doing so. She tells the prince that 'the Disaster of [their child's] Birth will be always, not a Blot only to his Honour, but a Bar to his Fortunes' and, if he 'lives to raise a Family...the Infamy must descend even to its innocent Posterity'(p.117) in order to make him maintain the child.

Legal provision for illegitimate children was often scanty, if not non-existent, women generally being dependent on the generosity of the men concerned. Roxana comments knowingly, 'Great Men...supply the Expence of their Out-of-the-Way Off-spring, by making little Assignments upon the Bank of *Lyons*, or the Town-House of *Paris*'(p.116). Mandeville commented similarly in *The Fable of the Bees* (1714), 'People of Substance may Sin without being expos'd for their stolen Pleasure' but poor people 'have seldom an Opportunity of concealing a Big Belly, or at least the Consequences of it'.^{viii}

Legitimate children could be given up to the parish, if their parents could not afford to keep them. However, the law of Settlement and Removal (1662) enabled church wardens and parish overseers to apply to two Justices for a warrant of removal by which a pregnant woman, or illegitimate children, would be returned to the parish in which they were deemed to have a settlement, generally the place of birth but sometimes the place they had come from. Hence pregnant women were often bribed or bullied to move to another parish.^{ix}

Roxana's children are sent to an aunt, who declares 'let the Church-Wardens take Care of them'(p.53). If we are not aware of how meagre the legal provision for children in such care was, we will fail to comprehend the aunt's cruelty. Roxana thinks 'of Parish-Children being Starv'd at Nurse'(p.52). Moll is aware that nurses are often 'poor People and their Gain consists in being quit of the Charge as soon as they can'(p.236), although she herself was brought up by a kind parish nurse. Malcolmson argues that 'the farming out of babies to poorly paid and unsupervised nurses often camouflaged a system of virtual infanticide'.^x Jonas Hanway presents an account of the problem in *An Earnest Appeal for Mercy to the Children of the Poor* (1766). Scott attempts to resolve the issue in the fictional world of Millenium Hall, where the ladies 'take every child after the fifth of every poor person, as soon as it can walk, till when they pay the mother for nursing it'.^{xi}

Defoe assumes that readers understand the Settlement Laws, which made each parish responsible for children born in it. He expects us to recognise that Moll's case is unusual: she 'was not a Parish Charge upon...the Town by Law'(p.45) because she was not born there but the magistrates took pity because she was only three. When Roxana's children are separated, eighteenth-century readers would have understood why: the youngest was born in the parish, so the law required that parish to maintain him. The other children are sent back to the parish they were born in. The aunt declares, 'I would send them from whence they came'(p.57). This may be harsh but it is also a reflection of law.

A woman objects, 'that is sending them to starve indeed; for the Parish has no Obligation to take Care of 'em'. There was considerable debate as to what constituted 'settlement' and, consequently, whether the parish the children were born in, or that in which their father settled, was responsible for supporting them. Fielding considers the Settlement Laws with a characteristic satiric slant in *Joseph Andrews* (1742), exposing the ludicrous intricacies of the law and revealing serious flaws in its execution. Lawyer Scout explains to Adams, 'any Person who serves a Year, gains a Settlement in the Parish where he serves' but notes that 'there is a material Difference between being settled in Law and settled in Fact', warning that 'When a Man is married, he is settled in Fact; and then he is not removeable'.^{xii} Roxana's children's uncle is aware of legal ambiguities and tells his wife that even if the children were sent to the parish their father had settled in, they could 'be sent back' to the parish of their birth 'in a Cripple-Cart, by the Justice's Warrant'(p.57).

Fortunately the uncle organised their relations to ensure that they 'enter'd into Obligations...to supply the needful Sums for their Maintenance'(p.58). They even send for the youngest from his parish, so that the children can be brought up together. If we do not take the Settlement Laws into account, we will fail to see that this basic humanity is quite radical and enables Defoe to underline the inadequacy of the law.

Blackstone explains that a woman could go before a Justice and 'charge any person having got her with child'. The Justice could 'cause such person to be apprehended, and commit him till he [gave] security, either to maintain the child, or appear at the next quarter sessions to dispute and try the fact'. Women could not be forced to answer questions about the father of a baby until one month after its birth, which Blackstone argues causes 'hardship upon parishes, by giving the parents opportunity to escape'(I,p.458).

The man would be discharged if the mother died, had a miscarriage, or was found not to be pregnant. Otherwise, the court or two Justices could order the mother or father to pay for the maintenance of the child. If one or both parents fled, the overseers or church-wardens could be empowered, by the direction of two Justices, to seize their 'rents, goods, and chattels'(I,p.448) to maintain the child. Such laws need to be borne in mind, for example when the 'midwife' tells Moll Flanders 'I understand...you have no Security to bring to prevent the Parish Impertinencies usual in such Cases'(p.221). The midwife has 'given Security to the Parish...to secure them from any Charge from' babies born in her 'house'(p.222).

Defoe examines women's economic disabilities, which were based on law, in some detail. The Dutch Merchant articulates conservative ideology: 'where the Man did his Duty, the Woman's Life was all Ease and Tranquility'(p.188). Roxana, opposed to traditional assumptions, replies that marriage is 'a dear Way of purchasing their Ease; for very often when the Trouble was taken off of their Hands, so was their Money too'(p.193).

Roxana considers at length the legal advantages and disadvantages of marriage as opposed to cohabitation. Peterson provides some useful comment on marriage laws when discussing *Roxana* but he has too much faith in the system of antenuptial agreements and trusts. He argues that Roxana's 'arguments...reflect new trends in the matrimonial law, designed to ease the wife's state of inequality'.^{xiii} Yet he does not differentiate adequately between Equity and common law.^{xiv} Roxana does not argue consciously in line with Equity; rather, she argues consistently against women's position according to common law, which ruled most women's lives. Equity did not ensure automatic rights: it intervened to overturn the worst injustices of the common law, provided the woman had property, a point Peterson does not mention. Roxana is not an apologist for eighteenth-

century law but a radical spokeswoman consistently criticising androcentric laws. To present her as arguing in line even with a relatively enlightened branch of patriarchal law is to misinterpret the nature of her presentation and Defoe's intentions in considering law.

The main legal and financial advantage of marriage lay in dower and jointure laws, which provided widows with some level of independence. Blackstone explains that jointure was usually the revenue from 'a joint estate, limited to both husband and wife' but could refer 'to a sole estate, limited to the wife only'(II,p.137). The husband controlled it and used it to support his family but on his death, the wife was given a fixed annuity, the jointure, from the lands. Marshall notes that the average English jointure in the 1560s was a fifth of the bride's dowry but that by 1700 it had decreased to between an eighth and a tenth.^{xv} In dower cases, widows were entitled to one third of the husband's lands and tenements held during his lifetime. However, Blackstone notes that 'in case of a specific endowment of less...the widow had still no power to waive it'(II,p.134). There were certain advantages to jointure as opposed to dower. A widow could take possession of her jointure immediately, but not her dower. Furthermore, a widow could be deprived of her dower but not her jointure if her husband were a traitor.

A jointure had to be for the life of the widow and exclusively for her, not a trustee in her stead. It was a supposedly safe means of ensuring that women were provided for. However, Roxana is not being unreasonably cynical when she assumes that a woman's jointure can be 'sacrific'd to the Creditors...and she turn'd into the Street'(p.189), since the law made this a very real fear for eighteenth-century women.

There were legal conditions for obtaining dower and jointure. The main condition, which Roxana could not fulfil, was that a woman had to be a man's lawful and only wife. If a woman had been divorced, dower would be denied but if separated, she could claim it. According to common law, she was entitled to dower even if the cause of separation was adultery. Civil law decreed that she was not entitled if she went to live with her lover, unless her husband was voluntarily reconciled to her.

Roxana regards the laws concerning dower as one of the advantages of being a wife rather than a mistress, for a wife can make 'claims upon [her husband's] Estate, by the Custom of *England*, if he dies'(p.171), whereas a mistress has no legal financial provision or recourse. Roxana's jeweller made a will in which 'he Will'd the Payment of [her] Jointure; as he call'd it'(p.85), as if she were his wife. He was killed and a Parisian lawyer 'directed [her] to make a Process in Dower upon the Estate...which accordingly [she] did'(p.92). Roxana does at least have the means to go to court. She claims to have 'good Friends...who would take Care to have Justice done [her] in *England*, out of his Estate'(p.91).

However, even when a widow was entitled to dower, Blackstone admits 'no small trouble, and a very tedious method of proceeding, is necessary to compel a legal assignment of dower'(II,p.139). Blackstone comments, 'in preconcerted marriages, and estates of considerable consequence, tenancy in dower happens very seldom' because women turning to the law for dower claims were slowing down the process of transferring ownership of land. Being thus considered 'inconvenient to families', jointures were 'introduced in their stead, as a bar to the claim at common law'(II,p.136). Copyhold estates were not subject to dower, unless it was by special custom of the manor, usually called the widow's 'free-bench'. A husband could bar his wife's free-bench by alienating his copyhold land during his lifetime. The Dower Act of 1833 effectively ended dower right, enabling a husband to bar the wife's dower right without her consent, by alienating his freehold as well as his copyhold land.

Dower was a widow's right but her husband could decide the amount of her jointure. If the husband said in the marriage service, 'with all my lands and tenements I thee endow', everything became liable to dower. However, if he said 'with all my worldly goods...I thee endow', the wife was only entitled to one third of his personal estate, as provided for by the Magna Carta (1215). Although the phrase remained in the marriage ceremony, Blackstone explains that it 'can now refer only to the right of maintenance, which she acquires during coverture, out of her husband's personalty'(II,p.134).

Dower laws were restrictive and even degrading to women, who were not consulted and could receive less than the value of the land and money they had originally brought to the marriage. Dower was assigned by the late husband's guardian or heir and the widow became tenant to the heir, often her son, even a child, whose guardian would oversee matters.

The situation had not improved by the early nineteenth century. Austen's Mrs Dashwood's late husband had only ten thousand pounds to leave her and her daughters, since the rest was tied up legally in his step-son's favour. John Dashwood has the legal right to decide his step-mother's dower. He considers giving her an annuity of one hundred pounds a year but his wife objects, 'An annuity is a very serious business; it comes over and over every year, and there is no getting rid of it'. Ultimately, his 'assistance extended no farther than their maintenance for six months at Norland'. This may be utterly unfair but, legally speaking, he is doing nothing wrong. Mrs Dashwood cannot sue for dower because her husband does not appear to have had free capital or land to take the dower from.^{xvi}

If the heir or guardian did not assign dower within forty days, or did so unfairly, the widow could have recourse to the law by a writ of dower and the Sheriff would appoint it. If only part of the dower was withheld, she had to bring an action of 'right of dower', as Roxana threatens to do, albeit without legal justification because she is not legally married.^{xvii}

Defoe's work is part of a tradition of fictional critiques of law as it relates to finance, a tradition which runs throughout the century and beyond. If we do not recognise specific elements of law, we will not understand fully the presentation of such issues as settlement laws, maintenance of children, dower and jointure, all of which were important contemporary issues. We need to understand law in order to appreciate the potential tragedy facing Roxana's children, for example, and to understand why she is so wary of marriage.

Defoe uses legal vocabulary throughout his work and clearly expects us to understand the nature of the issues he presents. Vague acknowledgments of 'social history' are inadequate when dealing with specific legal commentary. Peterson notes that Roxana and Moll 'have blended together to present, as it were, the experience of universal woman'(p.189); we need to recognise that an important part of this universal experience is legal.

Haywood: *Rash Resolve* (1724)

Haywood tends to be dismissed as a purveyor of romances of dubious literary merit. Whicher describes her as at best 'a writer of amatory romances and scandal novels', at worst someone whose 'tales' were 'properly discarded as useless lumber'. He feels that her work is 'chiefly significant to the modern student, not as revealing now and then the first feeble stirrings of realism, but as showing the last throes of sensational extravagance.'^{xviii}

Whicher describes *Rash Resolve* as a 'tale...of generous love and melting pathos'. His plot summary manages to ignore completely the legal content, noting only briefly that Emanuella 'is defrauded of her fortune by her guardian' and saved by Marco killing himself in court to attest to her innocence. This 'extraordinary measure'(p.59), is indeed reminiscent of romance but the consistent legal detail reveals more than 'sensational extravagance' and mere 'feeble stirrings of realism'(p.171).

MacCarthy argues that 'Haywood's imaginative writings include...cloak-and-sword intrigues, letters, pious effusions'. This comment goes some way to explaining Haywood's literary interests but her concerns are more 'serious' than this would suggest. MacCarthy notes that Haywood 'can hit the truth sometimes with instinctive aim' but underestimates the depth of this truth, or the deliberate nature of its presentation, the word 'instinctive' suggesting rather dismissively that any realism is accidental.^{xix} I maintain that Haywood's work presents a deliberate consideration of women's lives and the laws which governed them.

In *Rash Resolve*, Haywood presents a fictional consideration of women's vulnerability before the law, using the issue of corrupt guardians as a focal point for both the narrative and the consideration of law in the early part of the novel. Blackstone explains that when a child was

entitled to land, guardians '*in socage*' or '*by the common law*', were assigned until the child was fourteen. The father was the usual guardian, although in some cases the mother could be; they were referred to as '*guardians by nature*' or '*guardians for nurture*'. Orphans were provided with a '*discreet person*' to look after their personal estate^{xx} and to provide for and educate them. Only a relation to whom the estate could not possibly descend, would be assigned guardian, 'that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust'(I,p.461).

A guardian was usually appointed by will, with the same power as a parent. At the age of fourteen, a ward was allowed to choose his or her guardian, being '*presumed to have discretion*', unless the father had appointed one by will. Testamentary guardians remained until the ward was twenty one. They were not always imposed on children without their consent: Don Pedro, '*by [Emanuella's] Father's Will, and her own Consent was made her Guardian*'.^{xxi}

As Emanuella's guardian, Don Pedro inevitably controls her money but, tired of his attempts to marry her to his son, '*she desir'd him to leave her House, and to prepare to make up his Accompts with her*'(p.8). Don Pedro is not of course subject to English law but eighteenth-century readers would presumably have drawn comparisons with English law, knowing that guardians other than fathers were required to give an account of all transactions made on behalf of the ward and to answer for any losses incurred by what Blackstone refers to as '*wilful default or negligence*'(I,p.463).

Unwilling to relinquish control over money he had hoped to gain completely by marrying Emanuella to his son, Pedro states that her father, Alvarez, owed him large sums of money. He claims that Alvarez '*made over his Jewels, Plate, Household-Goods, and all other Moveables to him*' as security for the loan and so has them seized. Haywood explains that even if the debt were real, '*he could not justify the seizing on her Goods without a long Process*', the legal term for court action, '*and a Warrant proper for that End*'. Emanuella knows that '*she might justly sue them for a Robbery*'(p.9) but the officers have their '*Order*' and simply tell her '*she must make Appeal elsewhere*'. Emanuella's understanding of law is underlined by frequent use of legal terminology and comments such as '*She was not without Consideration by what means she should seek Redress*'. Yet her position is tenuous: Haywood explains that Pedro is using the fact that '*the Persons appointed by her Father's Will Trustees*' were not on the island. Since the Governor is not on the island either, '*there was no body in whose power it was to examine into this Affair*'(p.10).

Emanuella's vulnerable legal position is given its objective correlative when '*the same Officers...seiz'd her Person*'(p.11) and imprisoned her in Pedro's house. This may be a familiar narrative motif and an emotive symbol for female vulnerability before the masculine power of law but it is also a realistic legal option. Pedro has Emanuella imprisoned in his house, rather than prison, but the room is a domestic cell, '*little different from those in a common Goal*'(p.12). He is presumably able to do this because, as her guardian, he has the same powers as parents, who could confine children to the house. He knows '*how entirely he had her in his power*'(p.14) and exploits the power the law has given him.

Marco, Pedro's son, helps Emanuella to escape with her jewels and some money. They realise '*that the King was the only Person who had the Means of redressing her Grievances*'(p.25) and so determine to go to his court in Madrid. Emanuella's relative, Jabin, promises to introduce her to the King, who they expect to '*do her Justice as to the Recovery of that part of her Fortune which was still in the possession of Don Pedro*'(p.27) and order his punishment. However, Pedro has reached the King first, with witnesses '*whose Evidence he had Purchas'd*' and '*Bonds, Notes, and Bills, counterfeiting the dead Alvarez's Hand and Seal*'(p.28) and Emanuella is summoned to court.

The trial is presented in considerable and accurate detail. Emanuella is noble and so is judged by her peers. The charges are read exactly as they would be in an English court. The '*Heads of the Charge against her, as...taken from...her Impeacher*'(p.31) Pedro, are debt, seduction of his son, theft and conspiracy to murder him. Emanuella declares, '*I not await the dull Formalities of Law, nor ask Advice from learned Counsel drawn, but here presume to make my own Defence*'. Her vocabulary is fiery, befitting a romantic heroine: '*Permit me then, great King! to unfold a Story must make my vile Accuser's Heart grow cold within him, tho' warm'd with all the Fires from Hell*'.

The trial is at once part of a 'monstrous Legend' from romance tradition and a realistic legal process, as we are reminded by legal vocabulary such as 'Asservations', 'Evidences' and 'criminal Correspondance'(p.34).

Marco testifies that Pedro 'had a design to murder her, the surer to secure her Fortune'(p.34). In a further mingling of romance tradition and law, 'drawing his Sword, and falling on it', he kills himself to prove Emanuella's innocence, declaring heroically: 'Thus! I release myself of the Duty of a Son'(p.35). Pedro's conscience leads him to confess and the king orders the return of Emanuella's property. Notably, Emanuella felt truth would save her but Marco's romantic gesture and testimony are necessary to ensure justice.

Haywood is presenting a real legal problem in realistic legal detail but fiction enables her heroine to be vindicated in a situation which could end rather differently if the law alone were to decide. The remedy is legal but the means of attaining justice are partly those of old romance tradition, in the form of Marco sacrificing himself and romantic ideals of goodness and justice, which can only be mirrored imperfectly by the judicial system, even when it is represented by an equitable King and Judge. Haywood, like many female writers, seeks to reconcile the demands of fiction and realistic presentation of law. Emanuella is one of the many heroines of romance to be part of women's dream of empowerment: she has all the qualities necessary for romance, but also knowledge of law. Haywood underlines this: Emanuella argues 'like a Person whom many Years Experience had made perfect in the Law'. She has 'all those Virtues which wear the Name of *Manly*', the word 'wear' suggesting that Haywood rejects, perhaps playfully here, the gendering of such virtues, 'joined with Tenderness, Sweetness of Disposition, and every Grace with which the *softer* Specie attracts'(p.2).

Despite the well documented 'evolution' of the novel from romance,^{xxii} heroines' awareness of law does not seem to undergo a corresponding change. Radcliffe's Emily's knowledge of law and ability to use it in the 1790s is not substantially different to Haywood's Emanuella's in the 1720s. Richardson seems to make some use of this tradition, consciously or not, later in the century. Both Clarissa and Harriet Byron have the qualities of romantic heroines but both face specifically legal predicaments and blend awareness of law with Christian goodness and faith. The tone of novels may differ according to individual writers' styles, but their interest in law does not and their heroines' traditional 'romantic' qualities often blend with legal awareness, a point commentators do not seem to have considered.

The court is set in Spain, as we are reminded by the perjured witnesses being sent to the Inquisition. Yet despite such elements, the court scene is strongly reminiscent of the English judicial system. It would appear that Haywood considers English law but dresses it with the occasional exotic Spanish detail. Radcliffe presents a trial in a similar but more sophisticated manner later in the century in *The Italian* (1797). The King orders the return of Emanuella's goods and has Pedro detained pending trial, as if it were an English court. The drama of the court scene dissipates into local gossip about the trial: 'This Adventure engross'd the whole Discourse of the Town for a great while'(p.36), just as English towns gossiped about trials after every Quarter Sessions.

Given the clear interest in law, it is surprising that commentators have failed to take this novel seriously. Spender recognises the variety of Haywood's work, from newspaper 'agony columns' to plays and 'novels of every kind - epistolary novels, sentimental novels, 'thrillers', moralising novels and realistic novels'. Yet she does not consider the nature of Haywood's realism, much of which is dependent on an understanding of law. She argues that Haywood introduced 'the reality of a middle class woman as the reference point' of her novels and emphasises rightly that Haywood 'presents the world through women's eyes'.^{xxiii} I contend that this vision extends to women's view of their legal situation. Haywood's work is indeed 'feminine' in terms of its values and interests but her feminine vision also takes account, quite specifically and self-consciously, of law.

Richardson: *Clarissa* (1747-8)

Twentieth-century readers of eighteenth-century novels have perhaps become inured to narrative strategies and are unaware of the very real socio-legal conditions which led to such issues being highlighted and thus becoming almost clichéd as subject matter. Topics such as jointures, settlements and inheritance problems are based on well known laws which have now fallen into disuse but which eighteenth-century writers expected their readers to know. Twentieth-century readers may not recognise the importance of settlements to women: 'No man of position or wealth would dream of allowing his daughter to marry under the simple condition of the Common Law, no matter how favourable appearances might be. He would very properly insist upon a marriage settlement'.^{xxiv}

Lovelace shows his value for Clarissa in offering 'to settle upon [her], by way of jointure, [her] whole estate'.^{xxv} Eighteenth-century readers would have been aware that this apparently natural justice is in fact deeply generous: if his promises are genuine, he is offering to give up legal rights to her property, which would become his by law on marriage. The extent to which these rights were ingrained in eighteenth-century society is clear: if a woman tried to dispose of her property before marriage without her future husband's knowledge, it could be regarded as fraud. He could bequeath it by will without her consent but she could only bequeath it if he agreed. The Statute of Wills (1540), first allowed men but not married women to make wills concerning real property. Prior to this, the common law simply followed primogeniture and feudal customs. Blackstone explains that a man 'may dispose of [his wife's] chattels real, or shall have them to himself if he survives her: it would be therefore extremely inconsistent, to give her a power of defeating that provision of the law, by bequeathing those chattels to another'(II,p.498). Yet a woman had no automatic claim to her husband's property after his death, even if he had acquired it from her.

It is one of the measures of Pamela's 'victory' over Mr B that he treats her as if she were a lady of his own class and makes suitable provision for her in his will. He notes that 'the putting off these material articles...is one of the most inexcusable things a prudent man can be guilty of'. He explains, 'my family is almost extinct; and...the chief part of my *maternal*' and paternal estates 'in case I die without issue, will go to another family'. He has made her 'absolutely independent' so that she can live 'as [his] relict ought to do' and even asks her who she would like as trustees.^{xxvi} A man could bequeath to his wife in a will, since it would not take effect until after his death and did not imply the division of the legal identity vested in him during his lifetime.

It was possible for a man to endow his wife with part of his father's lands, during the father's lifetime and with his consent. Lovelace offers to do this for Clarissa with some of his uncle's land. Lord M writes to Lovelace, 'I will present HER (not *you*) either my Lancashire seat or *The Lawn* in Hertfordshire; and settle upon her a thousand pounds a year'(pp.664-5).

Settlements emerged around 1650. In equity, separate property could be settled on a married woman, under a trustee. If no trustee was appointed, Chancery would ensure the husband acted as trustee, in accordance with the terms of the trust. Many rich families settled money in this way for their daughters, to protect them by restricting the husband's access to money and to prevent them from expecting more money. However, they could be dismissed on legal grounds or simply ignored by husbands.

Settlements had to be executed before marriage. Anna advises Clarissa to obtain 'proper settlements. It will be to the credit of your prudence, and of his justice', realising 'that something of this should be done before you marry'(p.549). If a woman insisted on her 'equity to a settlement', usually half the property, or whatever portion she agreed to, was settled on her and the children but the rest was paid to the husband. It was possible but rare for a woman to apply to have the whole property settled on herself, for example, to protect it from her husband's creditors. There would have been a general public awareness of court cases concerning settlement disputes; this forms an implicit background to scenes such as Lovelace promising settlements. Astell explained the problems inherent in the settlement system at the beginning of the century: 'there have been but too many instances of Husbands that by wheedling or threatning their Wives...have perswaded or forc'd

them out of what has been settled on them'. She was painfully conscious that a woman may have to 'make court to' a husband 'for a little sorry Alimony out of her own Estate'.^{xxvii} Marriage was a lottery and could provide security or disaster, according to the character of the husband.

Richardson also addresses the question of legitimacy and inheritance. Belford may be a rake but he is conscious that illegitimate children do not have the same legal rights as their legitimate contemporaries. He asks Lovelace rhetorically, '(we, who are in possession of estates by *legal descent*) how [should we] have liked to have been such naked destitute varlets, as we must have been had our fathers...despised matrimony as we do'(p.612). Belford regards illegitimacy as a bar to inheritance, not simply as a moral stain, and views deliberately having illegitimate children as 'obstinate defiance of the laws and customs of his country', being aware that if a man has no legitimate offspring, his estate, 'must descend to some relation, for whom...he cares not one farthing'(p.614).

The only way in which an illegitimate child could be legitimated and thus become capable of inheriting, was by an act of parliament. Lovelace plays with the idea of having children by both Clarissa and Anna, arguing with egocentric sophistry that they can 'change names by Act of Parliament, to enjoy my estate'(p.922). In irreverently dismissing traditional standards of virtue, he aligns himself with Restoration rakes but in considering, however flippantly, an act to legitimate children, he shows both legal knowledge and aristocratic lineage because the wealth and influence required would have been out of the range of lesser men.

Clarissa is predicated partly on Clarissa's status as an heiress and dramatises the financial and affective problems faced even by privileged women. Keymer argues that Clarissa's predicament 'reflect[s] a larger pattern in the theory or history of government', seeing her as an embodiment of the people and Lovelace as Democracy, even viewing her rebellion as epitomising 'for American readers after 1776 the turbulent birth of their own nation'. He argues that Clarissa's references to her inheritance in terms of independence are due to a consciousness of the estate as a 'political' birthright, which she prefers to resign in 'a kind of Lockian contract' to her father.^{xxviii} While not denying interesting political inferences in the novel, I would argue that Keymer's emphasis on the political to the exclusion of the spiritual and legal, is misleading. Clarissa herself clearly views the inheritance in its religious and legal aspects and the independence she refers to is legal and financial. It is worth noting that she could not hold the estate in her own right because she is under twenty one and so needs a male trustee. It was normal for a father to act as trustee and this is appropriate to Clarissa's religious obligation of filial obedience.

Brissenden sees Clarissa's grandfather's will as 'The root of the trouble in the Harlowe family' but he also interprets the issue largely in terms of its political aspects, without considering seriously the legal background to this issue and other financial and legal topics within the text. He notes briefly that 'technical legal changes' in the seventeenth century eroded paternal power over eldest sons because they effectively rendered the father 'life-tenant of the estate', presumably referring to entails, which were introduced in the thirteenth century to give landowners control over the fate of their land.^{xxix} Entailed land was given to the grantee and a specified order of heirs. Mr Harlowe would at least have control over the bequest of his personal fortune, which would help to influence his son's behaviour. It seems more likely that James's unusual level of authority derives from some weakness in his father. Entailed estates meant that fathers could not control heirs with threats of disinheritance but they did not give future heirs equal authority with their fathers. James may be exploiting his status as heir but his power over his father is psychological, not legal, as Brissenden suggests.

Clarissa is only nineteen when she makes a will for her real estate. Eighteenth-century readers would have realised that this was rare. Children were considered infants by the law until twenty one. Blackstone notes that at fourteen, a male could make a will for his personal estate, 'if his discretion [was] actually proved'. He could be an executor at seventeen. A girl of nine was entitled to dower and at twelve she could make a will for her personal estate. At seventeen she could be an executrix but, as was the case for men, not until twenty one could she 'dispose of herself and her lands'(I,p.463). Richardson has Belford explain that Clarissa's grandfather's will 'has

enabled her at eighteen years of age to make her will, and to devise great part of his estate to whom she pleases of the family, and the rest out of it (if she die single) at her own discretion'(p.1191).

Masculine control over wives' and children's property was largely unquestioned. Yet fathers were accountable to children when they came of age for profits arising from estates which they had overseen on their behalf. It seems somewhat absurd that Mr Harlowe deprives Clarissa of liberty and even of pen and ink at home and later refuses to send her belongings to her, despite the fact that he will have to account to her for her estate when she reaches twenty one. The situation is of course exacerbated by the fact that, although Clarissa knows her rights, she refuses to oppose her father.

Mr Harlowe's behaviour is within the law but Clarissa could leave and live on her estate. Anna urges, 'resolve to assert your right. Claim your own, and go and live upon it as you ought'(p.587). She even views Clarissa's probable marriage with Lovelace as beneficial because Lovelace would fight for her: 'your relations will soon resign what they cannot legally hold...for your estate will then be his right'(p.549). It is interesting that Anna wants Clarissa to have her estate in order to be free and independent and yet, if she married Lovelace, she would lose everything to him. Clarissa is adamant that her estate 'shall never be [hers] upon litigated terms'(p.754) because her sense of filial duty will not allow her to oppose her father in court. It is a moral absolute which she feels she cannot infringe; her father's behaviour does not absolve her from her duty to 'Honour thy father and thy mother'.^{xxx}

Zomchick interprets the problems caused by the will in terms which Clarissa herself would not have been conscious of, politicising what are essentially religious feelings. He argues: 'Clarissa invokes the principles of a pre-capitalist if not a pre-civil ethos', claiming that she is 'limited by residual, "feudal" loyalties'. He comments that Clarissa refuses to litigate because of 'an internal resistance to using the rights of the juridical subject'. Yet she herself clearly sees it in terms of filial duty: she is not averse to contemplating asserting legal rights elsewhere, for example, claiming aversion to prevent an unwanted marriage and promising to prosecute Lovelace for rape if he threatens Anna or Hickman. Rather than being a 'neophyte juridical subject', Clarissa reveals herself to be fully aware of her rights and prepared to use them: the conflict arises as a result of her religious convictions, not because she is too immature to cope in the legal arena.^{xxxi} Failure to consider the legal background results in inadequate commentaries on the novel's thematic concerns but also in misunderstanding and underestimating Clarissa herself.

Sir Charles Grandison (1753-4)

Doody argues that 'In *Grandison*, Richardson deals with normal life in the polite world. The structure of society is not questioned, as it is in *Pamela I* and *Clarissa*'.^{xxxi} Yet a close reading of *Grandison* reveals that Richardson continues to dramatise legal and economic issues and to present fictional discussions concerning these questions.

Richardson comments on domestic economics through Lord and Lady L's marriage. Their financial arrangements are presented as ideal: she has a key to the drawer 'where his money and money-bills lie', together with the 'memorandum-book' in which they keep accounts. Even the independent Lady G accepts her husband's comment 'We can have but one interest' and says 'I wish not to be independent of you'.^{xxxi} Interestingly, Charlotte immediately recognises it as an issue of independence, not simply economics. It is worth remembering that despite the relatively enlightened behaviour of these men, the law would have given them total control of their wives' money. In presenting men behaving so kindly, Richardson appears to be supporting benevolent patriarchy, arguing for enlightened attitudes to law.

Grandison articulates a traditional viewpoint, opposing the annuity Lord G's family wants to give Charlotte because 'such a large allowance might make a wife independent'. He softens the comment by saying it would make it difficult for her husband 'to oblige her'(V,p.511). Yet his paternalism is relatively enlightened; hence he recognises his sisters' inheritance rights. In regard to real estates, men were given preference over women and the eldest male usually took overall precedence, as occurs in *Grandison*.

Blackstone explains that 'in general only the eldest son, in some places only the youngest, in others all the sons'(II,p.13) can inherit 'or, as our male lawgivers have somewhat uncomplaisantly expressed it, the worthiest of blood shall be preferred'(p.213). William Sprigge argued in the seventeenth century that 'the whole Inheritance is intayl'd on the first-born, and nothing but poverty and misery on all the rest of the bloud and kindred'.^{xxxiv} Over a century later primogeniture was still being criticised. Wollstonecraft refers to it as 'a barbarous feudal institution', where 'The younger children have been sacrificed to the eldest son', for the sake of 'perpetuating a name'.^{xxxv}

However, in the inheritance of personal estates women were regarded equally with men. Hence Grandison shares his mother's jewels with his sisters. Jewels were often regarded as a woman's rightful inheritance, part of her 'paraphernalia', that is, clothing and personal ornaments which a woman possessed when she married, or which her husband gave her during the marriage. A husband could dispose of her paraphernalia during the marriage but what remained reverted to her after his death, even if he died intestate. Jewels were particularly important because they constituted relatively independent property and women generally owned little else. Goldsmith's Miss Neville comments in *She Stoops to Conquer* (1773): 'A fortune like mine, which chiefly consists in jewels, is not such mighty temptation'(I,sc.i) to a husband because it will remain under her control. In the light of such laws, Miss Neville's reluctance to leave her jewels is very understandable. Such laws were well known in the eighteenth century and need to be borne in mind or we will fail to understand Grandison's actions, perhaps simply interpreting them as marks of generosity. His behaviour is to be interpreted partly as a manifestation of his rôle as an ideal aristocratic male: he is fulfilling legal obligations, albeit with good will.

Inheritance laws were influenced by gender but also by religion. The law was strictly Protestant, reflecting the views of the Protestant law-givers. Any Catholic and anyone who sent a child overseas to live or be trained in a Catholic environment, forfeited the right to sue, to be an executor or administrator, to inherit a legacy or deed of gift, or to hold any office in the country, together with forfeiting their goods and chattels and all real estate for life.

Religion is important in *Grandison* but the issues it raises are not purely theological. Doody reads Grandison's potential marriage to Clementina in religious terms: 'when [Clementina] realizes that he may marry her, but will never become a Catholic, she has to...choose between...faith and love'(p.325). For Clementina the issue is religious but for Grandison it is both religious and legal, a point Doody does not take into account. If he actually married Clementina and lived primarily in Catholic Italy, he would lose his inheritance in England. Jeronymo comments, 'Your fortune, Sir, by marriage, will be much more considerable than it can be by patrimony...Why then should you not look forward to your posterity as Italians?'. Grandison's reply reveals his clear awareness of the legal implications: 'I would no more renounce my Country than my Religion: I would leave posterity free'(III,p.196), recognising that he and his children would lose their rights to the English estate. It is also worth noting that foreigners or 'aliens', could not claim dower, unless they became queen consort, for they could not hold land. Clementina, who fortunately has a large independent fortune, would not have been able to inherit any of Grandison's land in dower, although Harriet would have no difficulty.

If Grandison regarded mixed marriage purely as a religious problem, he would hardly allow daughters to be educated as Catholics: he 'consent[s] that daughters shall be the mother's care' but 'the education of sons must be left to'(III,p.195) him. There is a legal rationale behind this apparent prejudice: daughters can be educated as Catholics because they would not inherit his estate if he had sons and would not carry the family name and honour. Inheritance laws were designed to protect the status quo. Heirs such as Grandison and later Austen's Darcy are deeply conscious that they are responsible for continuing the family name and so comments which may be taken to denote personal pride, even misogyny, are in fact practical acknowledgments of legal realities.

Richardson examines legal and economic issues, particularly those of interest to women, throughout his work, arguing gently but nonetheless firmly for enlightened use of law. Grandison, and the novel which bears his name, can only be understood fully in the light of this legal comment.

Sarah Fielding: *David Simple* (1744)

Spender argues usefully: 'Sarah Fielding's appeal to the literary ladies of her time consisted in part of her ability to depict the world as it impinges on women'(p.189) but fails to see that society impinges on women through the law, a point which Fielding was clearly conscious of. MacCarthy argues that *David Simple's* 'purpose is moral didacticism' and that Fielding 'achieves this sometimes by direct sermonising, sometimes by satiric reflections on human life'(p.256). MacCarthy, like Spender, ignores the competence of Fielding's handling of legal issues and does not recognise their importance in our evaluation of the novel. She allows that 'there are glimpses of reality', for example Cynthia's 'independent views on education and marriage'(p.260). Yet there is no recognition of legal issues even concerning marriage and certainly not in areas such as forgery, inheritance and litigation.

Sarah Fielding shows precise legal interest and knowledge. When Daniel forges his father's will, he is clearly aware of the relevant legal conditions, allowing his mother a jointure so as not to create suspicion, knowing that 'nothing but a Jointure could have barr'd her coming in for Thirds' in dower.^{xxxvi} Fielding is referring to the Statute of Uses Act (1535), which decreed that a woman could give up her dower right in exchange for a jointure, by an antenuptial agreement. Daniel is simply using the law to his advantage.

Daniel steals 'the real Will, and...put[s] a forged one in its place'. He writes the false will himself and bribes servants to witness it. He is careful to ask a lawyer's clerk to explain the legal requisites and is told that 'two Witnesses [are] sufficient, where the Estate [is] only personal, as that of his Father's was'(p.12). Fielding clearly expects the reader to be interested in such detail and assumes we will be aware of the law.

David suspects his brother but does not want to 'bring publick Infamy'(p.23) on him. The servants are frightened into telling the truth by being threatened with 'the Consequences of being convicted in a Court of Justice of Forgery, especially of that heinous sort'. David's uncle warns Peggy, 'if she would confess the truth, she should be forgiven; but if she resolved to persist...she would surely be hanged'(p.24) since her husband has already confessed perjury and abetting perjury.

David is fortunate in that he has the money to pursue the case at law. Later in the novel, a 'beggar' tells David that his wife inherited a fortune from her uncle but that 'a profligate Nephew'(p.395) 'produced a Will in his own Favour', which circumstances suggest was 'a vile Forgery'. However, 'being destitute of both Money and Friends, [they] had no Means of bringing it to a legal Proof'(p.396).

David is later forced into a legal battle because 'a Person...put in his Claim to the Fortune, which...was left [to David] by his Uncle'(p.316). He is surprised to find the law-suit so 'tedious and expensive'. David's opponent is wealthier and 'versed in the Knowledge of every shuffling Art to evade' the laws and 'to make them subservient to his own Purposes'(p.318). David wants to drop the Chancery law-suit because he cannot afford it but he bows to the influence of the wealthy Mr Ratcliff, who seems to regard litigation as a game.

Eighteenth-century readers would presumably have been aware that Ratcliff is guilty of the offence of 'maintenance', which Blackstone defines as: 'an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it...the punishment by common law is fine and imprisonment'(IV,p.134). David loses the case and so Ratcliff 'advised him to appeal it to the House of Lords'(p.332) but he decides not to.

The whole litigation process is presented as utterly inequitable and determined primarily by influence and money. Topics such as forgery and inheritance litigation are clearly not simply narrative conventions which reflect cruelty in individual 'villains'. Such issues provide interesting elements of plot but also reflect problems people faced in reality.

In his introduction to *David Simple* Kelsall fails to recognise any thematic strand beyond that of the hero's 'simplicity' and is patronising even when he purports to praise Fielding: 'She is at her best when the style becomes the mirror of her theme and she is simple'. He refers to her writing

as 'naïve' in its directness, or 'innocent', a term which is of dubious usefulness in literary criticism. Fielding's subject matter is not as 'simple' as he thinks: Kelsall fails utterly to recognise her knowledge of law. He argues, 'At her best...she has something of the vision of a child'. Yet both her subject matter and her tone are mature. She deals confidently with legal vocabulary, her 'directness' being part not of a naïve text 'resembling folk-tale or fairy-story'(p.xvi) but a realistic socio-legal critique. It is Kelsall's reading which limits Sarah Fielding, not the text itself.

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

Sidney Bidulph, like *David Simple*, has been largely dismissed as unworthy of comment, its socio-legal content ignored. Spender argues that it is 'a classic which ranks with *Evelina*'(p.178) but pays no attention to its discussion of laws and finance. Sue Townsend appreciates the 'subsidiary stories about women's lives' as literary pieces but fails to note their importance in terms of socio-legal commentary.^{xxxvii}

Sheridan evinces a clear awareness of law, especially concerning jointure and inheritance. Sidney's mother cannot alleviate her daughter's financial hardship, explaining: 'Your brother possesses all when I die'(pp.307-8). Sidney has few jewels, having 'those only which were [her] mother's when she was a maiden'. Most of her mother's jewels were given to her by her husband; she saves these jewels for her son's future wife 'for they are family jewels'(p.29). They are not part of her personal estate which, unlike her money, would not automatically pass into her husband's hands on marriage and could be passed on to Sidney.

Lady Bidulph consistently pays more attention to heirs' rights than to her own daughter's. She will not allow Sidney's jointure to be too large because if she should be widowed young, 'a great part of the fortune would be swallowed by dowagers, and the heir not have enough to support his rank'(p.86), since Mrs Gerrarde already has a jointure on the estate.

Sheridan presents a range of financial issues, some of which lead to litigation, assuming the reader, like the characters, is familiar with the law and the potential difficulties of court cases. Sidney's brother, for example, 'congratulates [her] on [her] good fortune, in having [her] jointure settled on that part of the estate which is not disputed'(p.102). He warns her, '[Arnold's] next step will be to wheedle you out of your jointure'(p.223). Sidney herself offers her jointure to ease her husband's financial difficulties, 'think immediately of selling my jointure'(p.258) but he does appear to use a certain amount of emotional blackmail. Sidney is reduced to 'fifty pounds a year...reserved to [her] out of [her] jointure when the rest was sold'(p.274).

Mrs Gerrarde has also had financial difficulties; after her husband's death, she 'sollicit[ed] for [her] pension', but 'As [she] had formerly been a Roman Catholic, and had not publicly renounced that persuasion, some difficulties arose'. She asks a male friend of her late husband to try to influence the 'secretary at war' but they 'could not surmount the difficulty of the objection which was made to [her] claim'(p.182).

It is hardly surprising that Sheridan should consider financial issues facing women: they were of great interest to female readers, who would be unlikely to have independent financial means. Mrs Vere marries with her father's consent but against her mother's. The father had promised to bequeath her 'portion' to her but the mother forces him to disinherit her. She is 'cut off with one shilling, and [her] intended fortune bequeathed to [her] eldest sister'(p.64). The mother is his 'sole executrix'(p.66) and ensures Mrs Vere's fortune goes to her sister, ironically leaving herself less to inherit as 'residuary legatee'(p.64). Lady Grimston finally disinherits her daughters completely and leaves 'her whole fortune to charitable uses'(p.256).

Mr Vere senior threatens Lady Grimston that if she does not make 'proper amends' financially to his family, to replace the marriage 'portion' they expected, he may 'use of such means as the laws allowed him, in order to compel her'. She replies, 'what he had already obtained was by fraud'(p.66) and refuses to comply. We read 'The law-suit was carrying on with great acrimony on both sides'(p.67) but Mrs Vere offers to 'give up half [her] jointure, provided he would drop his suit'(p.68). The dean tells Lady Grimston that this disengages her 'from a troublesome and vexatious

law-suit, that would, if pursued, infallibly turn out to [her] disadvantage'(p.69).

Mrs Vere is painfully aware of the problems in domestic relations which can be caused by inheritance claims. She writes, 'I was brought to-bed of a dead female child. The estate, in case of Mr Vere's dying without issue, devolved on his sisters'(p.67). She hopes that this will appease her dead husband's family and stop the legal battle concerning her marriage portion but it does not.

Mrs Main had similar problems regarding inheritance being used to control marriage choice. Her father's will stipulated that 'if ever she married without her brother's consent, she was to lose'(p.249) her fortune. Ironically, her brother, acting as guardian, only accepts her choice of husband after her twenty first birthday, when she is free to bequeath her fortune to anyone. She bequeaths it to her beloved and so, as contemporary readers would have known, will lose nothing in marrying him.

Twentieth-century readers may not realise how brave this step is. Sheridan presents a potential victim of law using it as a means of empowerment. Mrs Main uses the law to subvert its own governing rationale, which was to protect masculine power over property. Ironically, she has to turn to the primary tool of patriarchal power to serve her own individual affective interests, demanding the right to determine her own life by controlling her marital destiny but having to risk everything to do so. Sheridan uses a common narrative motif, that of thwarted love, but adds a realistic dimension through law. This incident can thus be interpreted as a small part of a shared dream of female empowerment, detectable in women's writing throughout the century.

Sheridan also deals with the question of illegitimacy and inheritance but rather than divorcing inheritance law from the related moral issues, she approaches law from a moral standpoint. Sidney asks Faulkland to marry Miss Burchell so that 'the disgrace of a darling child [will] be prevented'(p.293), not in order to facilitate inheritance. Miss Burchell knows that she must rely on his 'honour, without pretending to have any *lawful* claim'(p.294). Faulkland is aware that the law could rob his son of his inheritance and explains, 'I have long ago settled my personal fortune on' the son, 'in case my next heirs should on account of the illegitimacy of his birth, claim the family estate'(p.427). His comment may seem unreasonably lacking in trust towards his relations and the law, yet it is borne out later: 'The relations of Mr Faulkland...claimed his estate, and at length obtained it, the illegitimacy of the child being proved'(p.429), presumably because the marriage took place long after his birth.

We may feel this is unjust and wonder if Sheridan is exaggerating the legal issue. However, Faulkland himself accepts the law and does not fight it. He does not regard his son as his lawful heir and comments, 'I never wished to debar my lawful heirs in favour of this child; though I love him tenderly and they are worthless people, whom I despise'(p.427). The situation may be unjust but eighteenth-century readers would have realised that it was an accurate reflection of law.

Sheridan also considers the legal problems caused by widows pretending to be pregnant with an heir. If such a child were legitimate, the mother would usually enjoy the use of the estate until the heir became an adult, rather than simply living off whatever her husband had left her. Sidney writes, 'the widow of Mr Arnold's brother is found to be with child'(p.95). We may be surprised that this news should alarm her but eighteenth-century readers would immediately have understood that Arnold's fortune could be in danger. Sheridan assumes we are aware of the law and will want to know certain details in order to make our own judgements, rather as people read pamphlets containing court transcripts and came to their own conclusions about a wide variety of cases. Sidney tells us that the pregnancy was not mentioned when the husband died and that no-one had 'any cause to suspect it; but the strongest presumptions in the world to the contrary, as her husband and she lived a-part'(p.96).

The widow claims she has only just become aware of the pregnancy herself, although 'her husband has been dead four months'. Sidney considers the evidence and declares 'This I am told is very possible, though not very common'. The widow claims 'she and her late husband had been reconciled a little before his death; and that, had he recovered, she was to have lived with him again'. Sidney explains, 'as [Mr Arnold] was his heir, of course he had made no will. He mentioned not his wife'(p.96) because they were separated.

One would think that such a woman could not possibly win her court case. Yet they are aware that 'If this child should make its appearance in the world time enough to prove the possibility of its being the offspring of the late Mr Arnold...it must be considered by the law as his heir, notwithstanding the husband and wife lived apart'(p.96). The lawyers tell them that even if the child is born within ten months, the widow would have to 'prove her assertion, in regard to the pretended meeting between her and her husband; which it is imagined is not in her power to do'(p.97). The widow has a baby girl whom she introduces as an heiress 'whom an unjust uncle debars of her right'(p.103).

Sidney is clearly aware of the legal deadline of ten months and expects Cecilia, to whom she is writing, to understand her comments. She tells her 'upon an exact calculation, this little girl has made her appearance just twelve days later than she ought to have done, to prove her legitimacy'. We may assume, with the Arnolds' lawyers, that this 'is enough to destroy her pretensions', yet the law is sufficiently ambiguous to enable some doctors to 'declare they have known instances of children being born, even so long after the stated time allotted by nature'. We read that 'every one believes this is an infamous and unjust claim'(p.104).

Blackstone explains that the length of time allowed for legitimacy between a husband's death and the birth of a child was 'a matter of some uncertainty, the law is not exact as to a few days'(I,p.456). One would have thought that the period of gestation would have been determined consistently but, for reasons best known to eighteenth-century legislators, although the law allowed ten months between the death of a husband and the birth of a child viewed as legitimate, it allowed only nine months in the event of a husband going abroad.

If a couple were divorced, any children the wife might have were considered illegitimate, since the law supposed the couple would adhere to the sentence of separation, 'unless access be proved', as Mr Arnold's widow has to prove. Wolfram notes that 'Eighteenth-century divorce Acts commonly contained clauses bastardising children born a year after separation of husband and wife'.^{xxxviii} However, Blackstone explains that in a voluntary separation 'access of the husband shall be presumed' unless they could '[shew] him to be elsewhere'(I,p.457) because they were still married. If the husband was abroad for some time, as is the case in *Moll Flanders* (1722) and *Roxana* (1724), the law allowed the possibility of illegitimacy.

The heir presumptive could serve a writ, obliging the woman to prove whether or not she was pregnant. Blackstone explains that 'a jury of women is to be impanelled to try the question, whether with child, or not'(III,p.362). If she was, she would be kept 'under proper restraint, till delivered'(I,p.456). Such laws highlight the view of women as bearers of heirs, rather than individuals who should have separate legal rights.

If a woman was found not to be pregnant, and the inheritance thus went to the presumptive heir, she could still reclaim it if she had a child within ten months of her husband's death. Naturally, this could cause some confusion. Yet matters could become even more complicated if a widow married soon after the husband's death and had a child soon afterwards. Blackstone notes that such a child was 'said to be more than ordinarily legitimate' and since he could, as far as the law was concerned, have been fathered by either man, he could choose between them when he reached the age of twenty one.

The widow offers 'a composition'^{xxxix} but the Arnolds' lawyer recommends they refuse, since to accept it 'would tacitly admit the legality of their claim'. Arnold is aware that the widow's offer to settle the claim would not necessarily be valid. He laughingly says 'he is very much obliged to the lady for condescending to give up more than half, when her daughter has a right to the whole; without whose consent he supposes it is not in the mother's power to make terms'(p.107). What he says is in jest but the legalities of the issue are ever-present and his comments are legally accurate: the mother will have to account to her daughter for transactions concerning the inheritance.

The widow produces Mrs Gerrarde's brother to claim he witnessed a meeting between her and her husband. It is suggested that 'in all human probability that child, which is to inherit the Arnold estate, is his'(p.224). To complicate matters, the man trained as a lawyer and seems to be orchestrating everything. Sidney tells us 'Tis whispered, that the widow is supposed to be privately

married to this attorney'(p.225). Ultimately they marry openly and the widow gains Arnold-Abbey and even much of its furniture.

Sidney Bidulph reveals itself to be deeply concerned with legal issues: use of specific legal language and implicit reference to laws show financial predicaments to be predicated firmly on law. It is time that commentators reappraised this novel in the light of its clear, consistent and detailed concern with law. Popular narrative elements such as parental control over children and their financial destinies are rarely, if ever, solely literary in nature: *Sidney Bidulph* is a detailed fictional treatment of women and their male affines' financial position before the law.

Until we recognise the element of socio-legal critique, *Sidney Bidulph's* worth will only be half appreciated. For women like Sheridan, writing was clearly not simply a literary exercise: it was a heartfelt questioning of legal issues which affected their lives and which they had no other public means of expressing. Novels such as *Sidney Bidulph*, presenting many of the financial and legal issues which concerned women, must have been read avidly by women denied opportunities to debate such questions publicly.

Women writers such as Sheridan entered the masculine world of law in order to question it from an alternative stand-point: the feminine. Her treatment of law is important not simply in terms of elucidating the eighteenth-century obsession with law but as a form of protest, less strident than that of Wollstonecraft and Hays later in the century but nonetheless important. We need to remember that the law was founded on principles of masculine property. Sheridan bases her presentation of legal issues on very different principles: feminine interests. This unashamed feminine focus, concerned with women and their interests, is the essence of eighteenth-century women writers' challenge to androcentric law.

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

Spender argues that Wollstonecraft turned personal experiences 'to fictional account' to 'gauge...the personal dimensions of an oppressive social structure'(p.247). She notes interestingly that Wollstonecraft wrote 'To find a framework for explaining and evaluating women's existence'(p.254) and argues that for Wollstonecraft, 'writing...was a consciousness-raising activity. As it can be for her readers'(p.250). In explaining the focus of this consciousness-raising, she comments that Wollstonecraft links 'personal suffering with political, social and economic conditions'(p.254). Yet she does not note the importance of law as a basis for these conditions. Maria Venables, for example, is in one sense 'Everywoman', suffering representative ills experienced by women in everyday life. Wollstonecraft is deeply conscious that these ills are not determined vaguely by 'society', as commentators tend to assume, but specifically by its laws.

In her novels Wollstonecraft presents female characters experiencing financial difficulties both in and out of marriage. Her disturbing fictional presentations are accurate reflections of legal realities. She underlines this by her use of legal terminology, commenting in *Wrongs of Woman*, for example: 'The tender mother cannot *lawfully* snatch from the gripe of the gambling spendthrift, or beastly drunkard...the fortune which falls to her by chance; or (so flagrant is the injustice) what she earns by her own exertions'. She realises that a man 'can rob [his wife] with impunity, even to waste publicly on a courtesan' for 'the laws of her country...afford her no protection or redress from the oppressor, unless she have the plea of bodily fear'(p.118). She paints moving pictures of women trying to work and either being forced into prostitution or losing their earnings to worthless husbands.

Maria's landlady tells her that her husband 'ran in debt' to buy 'an impudent slut' fine clothes. He even 'signed an execution on [his wife's] very goods, bought with the money [she] worked so hard to get; and they came and took [her] bed from under [her]'. He stole her clothes and pawned them. She tried to retrieve them, telling the pawnbroker that she bought the clothes with her own money but is simply told, 'It was all as one, [her] husband had a right to whatever [she] had'(p.130).

In 1737 Chancery declared that a wife's earnings should be safe from her husband if a separation agreement existed. Yet if a woman was separated but not protected by a separation deed,

all income from her real estate and any future legacies, went to the husband. Informal marriage customs offered women more financial independence, at least within the community. Besom marriages entitled women to retain their maiden names, property and rights to children. Smock weddings ensured a woman's financial obligations and assets remained separate from the husband's.

By law, a woman's business stock, savings and earnings could be seized by her husband at any time. In her autobiography Charlotte Charke explains that when she began trading, she was worried how to secure her 'Effects from the Power of [her] Husband; who, though he did not live with [her], [she] knew had a Right to make bold with' her possessions because 'there was no formal Article of Separation'.^{x1}

A wife could only enter a contract jointly with her husband because as an individual she had no property to satisfy a contract. A woman could trade separately from her husband if he agreed and, at least in theory, he forfeited his right to her business assets. Yet her assets could usually still be used to pay his debts and he was liable for her contracts. Eighteenth-century readers would automatically have related Maria's landlady's problems to such laws.

Wollstonecraft was bitterly aware that the law declares that 'over their mutual fortune [the wife] has no power, it must all pass through his hand'(p.115). Venables forces Maria to apply to her uncle for financial assistance and lives extravagantly but will not allow her sufficient money for household expenses. Wollstonecraft argued bitterly that 'a wife being as much a man's property as his horse, or his ass, she has nothing she can call her own'(p.118). Swift's Lady Smart complained in a similar vein at the beginning of the century, 'a marry'd Woman has nothing of her own, but her Wedding-Ring and her Hair-Lace'. She, like Wollstonecraft's Maria, recognises that this is not a social but a legal problem, arguing: 'if Women had been the Law-Makers, it would have been better'.^{xii}

Venables extorts money from Maria on several occasions. When her uncle gives her money as a 'parting present', we read 'A copy of a writ was the stale pretext to extort it from me'; Maria later realises it must have been 'fabricated for the purpose'(p.117). Maria even 'offered him five hundred pounds, if he would sign a bond not to torment [her] any more' and 'The bond was executed'(p.134). Yet he has her drugged and taken to an asylum, wanting her to make over half of her inheritance to him in return for freedom. Despite the extreme nature of Venables's behaviour, it is plausible, being based on the legal premise that a wife's money and property belonged to her husband.

Maria's uncle tries to protect her financial interests before he goes away by leaving a fortune to her daughter, with Maria as guardian. While she and Venables are separated this should work but, as she is aware, if she agrees to a reconciliation, to regain her liberty and her child, he could inveigle her into parting 'with the money he could not legally force from'(p.131) her.

Wollstonecraft rightly says that a husband can 'use any means to get at what the law considers as his, the moment his wife is in possession of it'. Thus Venables is legally justified, it appears, in forcing the lock of his wife's writing desk because 'he is responsible for her maintenance'(p.118). For this reason, a man was responsible for his wife's debts contracted before marriage, to the full extent of his property. Blackstone explained that, by marriage, 'he has adopted her and her circumstances together'(I,p.443). A wife could thus contract debts in the name of her husband. When Maria leaves Venables and says 'he shall be answerable for no debts of mine'(p.120), she disassociates herself legally from her husband. This is not simply an expression of pride but a statement of intent, in full cognizance of the law, which Wollstonecraft assumes we recognise.

Wollstonecraft challenged the legal and financial basis of the marriage contract, arguing in *Rights of Woman* that a woman 'must not be dependent on her husband's bounty for her subsistence during his life, or support after his death'(p.259). Marriage settlements provided some protection for women. However, Wollstonecraft considers the potential problems inherent in such laws in *Wrongs of Woman*: Maria's brother 'discovered a flaw in the settlement made on [his] mother's children, which set it aside'. He allows his father 'a tithe of his own, or rather [their] fortune'(p.110). Maria is helpless, knowing that the law and the males in her family are against her.

In *Rights of Woman* Wollstonecraft again comments on unfeeling brothers and their financially vulnerable sisters, criticising men who 'give as a favour what children of the same parents had an equal right to'. She also criticises women who marry such men and view their sisters with 'averted looks as an intruder, an unnecessary burden on the benevolence of the master of the house and his new partner'(p.157). Yet she is not falling victim to her imagination but simply presenting harsh realities in fictional form. Mary Radcliffe exposed the problems of such women in her essay, *Female Advocate* (1799), 'The parents die, and leave them, without a provision, a burden upon their connections'(p.447).

In *Wrongs of Woman* we are presented with the human side of the legal problems presented in *Rights of Woman* in that we empathise with the characters. In both her essays and her fiction, Wollstonecraft deals with legal background deliberately and competently, presenting the beginnings of an agenda for change, implicitly at least, which is strikingly similar to the less formalised comments made by such disparate writers as Astell, Aubin and Barker at the beginning of the century.

Women's financial position before the law had not improved significantly during the century and so Wollstonecraft is fighting the same battle, albeit rather more stridently and self-consciously, that Astell had. Maria's difficulties stem partly from financial problems which arise because she is married and therefore has little control over her money. Maria is an heiress and would have had some sort of settlement drawn up on marriage but, as Astell noted at the beginning of the century in *Reflections Upon Marriage* (1706), 'A Man enters into Articles very readily before Marriage, and so he may, for he performs no more of them afterwards than he thinks fit'(p.106). Nearly a century later, Wollstonecraft gives a fictional example of just how tenuous this position was.

If we put the eighteenth century into a wider historical perspective, it is not surprising that Wollstonecraft should be debating the same topics Astell had: only in 1857 were women's earnings protected from deserting husbands, with the advent of the Divorce Act; women were not able to have their own savings accounts until 1881; they did not effectively have property of their own until the Married Women's Property Act in 1882 and were not granted the right to manage their property separately from their husbands until 1893; they were not allowed complete control over their wages until 1907. Reform is a slow process, one which is reflected in fiction throughout the eighteenth century.

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- ii E.James, *Daniel Defoe's Many Voices: A Rhetorical Study of Prose Style and Literary Method*, Amsterdam: Rodopi, 1972, pp.232-3.
- iii Sir W.Blackstone, *Commentaries On the Laws of England*, sixth edition, 4 vols, Dublin, 1775, II,p.2.
- iv M.A.Radcliffe, *The Female Advocate Or, An Attempt to Recover the Rights of Women from Male Usurpation* (1799), London: Garland, 1974, p.434.
- v D.Defoe, *Moll Flanders* (1722), edited by D.Blewett, London: Penguin, 1989, pp.177-8.
- vi D.Defoe, *Roxana* (1724), edited by D.Blewett, Harmondsworth: Penguin, 1985, p.46.
- vii M.Wollstonecraft, *The Wrongs of Woman: or, Maria* (1798), edited by J.Todd, London: Penguin, 1992, p.115.
- viii B.Mandeville, *The Fable of the Bees* (1714), edited by P.Harth, Harmondsworth: Penguin, 1970, pp.107-8.
- ix Inevitably, some women miscarried or even died while being forced to move from parish to parish. The *Northampton Mercury*, 14th September, 1741, relates the case of a woman miscarrying on a cart; the *Salisbury and Winchester Journal*, 2nd July, 1750, recounts the story of a woman who was denied help by the parish and was subsequently found dead in a gravel pit, along with her new baby.
- x R.W.Malcolmson, 'Infanticide in the Eighteenth Century', in *Crime in England 1550-1800*, edited by J.S.Cockburn, London: Methuen, 1977, p.207.
- xi S.Scott, *Millenium Hall* (1762), London: Virago, 1986, p.14.
- xii H.Fielding, *Joseph Andrews* (1742), edited by D.Brooks-Davies, Oxford: Oxford University Press, 1986,

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- pp.252,254,255.
- xiii S.Peterson, 'The Matrimonial Theme of Defoe's *Roxana*', PMLA LXX, 1955, pp.166-91, p.187.
- xiv 'The Courts of Common Law and the Courts of Equity administer two distinct systems of law...there is one law for the rich, another for the poor'. *On Married Women's Property Bill*, Special Report, 17th July 1868, paragraphs 2,6, reprinted in *British Parliamentary Papers: Marriage and Divorce*, 1970, II,p.ix.
- xv R.K.Marshall, *Virgins and Viragos: A History of Women in Scotland from 1080 to 1980*, London: Collins, 1983, pp.75-6.
- xvi J.Austen, *Sense and Sensibility* (1811), edited by R.Wilson, London: Macmillan, 1984, pp.36-7,49.
- xvii See also discussion of *Roxana* in chapter 4.
- xviii G.F.Whicher, *The Life and Romances of Mrs Eliza Haywood*, New York: Columbia University Press, 1915, p.171.
- xix B.G.MacCarthy, *Women Writers: Their Contribution to The English Novel 1621-1744*, Cork University Press, 1944, pp.233-4,249.
- xx Personal estate: tangible personal property other than land. Blackstone defines it as 'things *moveable*...Such are animals, household-stuff, money, jewels, corn, garments' (II,p.387).
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- xxix R.F.Brissenden, *Virtue in Distress: Studies in the Novel of Sentiment from Richardson to Sade*, London: Macmillan, 1974, pp.164-6.
- xxx Exodus 20.12.
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