

III. Virtue: A Moral Concept In A Legal Context.

Writers throughout the eighteenth century were concerned with the nature of virtue, the legal double standard and the disabilities forced on women by the laws regulating sexual conduct; in an eighteenth-century context, virtue is a legal as well as a moral issue. Mullan argues that Richardson, and male writers of all eras, 'isolates virginity as [the] essential representation' of femininity.ⁱ Yet this attitude, while no doubt based partly on ideas of mythologised feminine purity, whose prurient angle is exposed in *Fanny Hill* (1749), is also derived from property laws. Lovelacian style lechery is fuelled partly by ideas of destroying another man's property. Equally, concern for a mother's or a wife's chastity is strongly related to a desire to protect patrilineal inheritance structures.

Mandeville argued in 1723 that honour, a word used almost synonymously with virtue, is 'a Chimera...an Invention of Moralists and Politicians', which 'signifies a certain Principle of Vertue not related to Religion'.ⁱⁱ While Mandeville is deliberately provocative and so not an entirely reliable mouthpiece for eighteenth-century thinking, he does highlight the disparity between twentieth-century assumptions about eighteenth-century virtue and those which actually framed eighteenth-century behaviour.

Eighteenth-century legislators did not simply translate moral concerns into law. Blackstone notes that in 1650 'the ruling powers found it for their interest to put on the semblance of a very extraordinary...purity of morals' and so incest and adultery were made capital offences; brothel-keeping and fornication were made capital for second offences. However, 'at the restoration, when men...fell into a contrary extreme, of licentiousness, it was not thought proper to renew a law of such unfashionable rigour'.ⁱⁱⁱ Eighteenth-century concepts of virtue are surprisingly pragmatic and are predicated not on religious ethics as we might expect but on issues of power and property, which were often related by way of inheritance law.

Female virtue was defined almost exclusively in terms of chastity, a term which ostensibly indicated many moral qualities but which ultimately ensured that brides would be virgins and that heirs would thus be legitimate. Virtue was one of the most important issues in an eighteenth-century woman's life because it helped determine marriage opportunities and therefore her economic situation for life. It is vital that we endeavour to interpret issues not in accordance with twentieth-century conceptions of law but in relation to the rather different standards of eighteenth-century legislation.

The discussion concerning the nature and protection of virtue ran throughout the century. Attitudes vary but writers show consistent discomfort, sometimes anger and at times dark amusement at the outrageousness of women's chastity being reduced to a property issue and of sexual misdemeanours being viewed, directly or otherwise, in terms of property.

Issues such as rape tend to be viewed purely as narrative strategies within a sentimental framework. Todd notes usefully that poverty is the test of the sentimental man, for example Fielding's David Simple and Goldsmith's Dr Primrose, but that sexual assault is the test of the sentimental woman.^{iv} Yet sexual assault is also presented in a clear legal context which writers assume we recognise.

Tompkins sums up the main themes of eighteenth-century women's writing as 'Pursuit and endurance', arguing that women writers presented 'The domestic scene, often steeped in sentiment or melodrama but enlivened at times with a sort of patchy realism'. If Tompkins had addressed this realism, it would have become evident that it is by no means universally 'patchy'. Tompkins steadily refuses to recognise legal issues, accepting for example, that Pamela's chastity has 'a market value' but explaining tragedy due to loss of chastity in 'Magdalens of gentle blood' as 'delicacy forbid[ding] compromise or concealment...noblesse oblige', failing to account for the legal reasons for their downfall.^v While not discounting the importance of moral principle for some individuals, eighteenth-century women were 'ruined' after sexual experience not because of moral principles but because they were no longer marriageable. Since women from the upper classes could not realistically expect to earn a living, the only 'heroinely' option is to die.

McKeon notes that 'female chastity [was] required far more insistently of gentlewomen than

of those lower down the social scale, where the transmission of property is less at issue'. Apparently falling victim to eighteenth-century apologists of the system such as Dr Gregory, who argued that women were dignified by preserving family honour, he argues that women 'increasingly come to be viewed...as the repository of an honor that has been alienated from a corrupt male aristocracy'.^{vi} In so doing, he ignores the legal disadvantages this view of women gave rise to. Steeves notes rather more usefully, 'The fears and compunctions of the heroines of fiction were not illusions and not mere pietistic sentiments' but 'practical wisdom', commenting that 'ruin' generally meant prostitution.^{vii}

Critical assumptions need to be clarified through careful consideration of the ideologies behind narrative conventions such as trials of virtue. Eighteenth-century fiction is obsessed with the topic of virtue not simply because of religious or moral feeling but because it is related to the debate concerning women's position before the law.

Aubin: Strange Adventures of the Count de Vinevil and His Family (1721) and The Life and Adventures of the Lady Lucy (1726)

Munzo Rogers argues that Aubin's romances do not show 'insight into woman's nature or position'. Yet novels such as *Count de Vinevil* clearly consider women's legal position, for example, when the Count of Longueville tells his wife Ardelisa, 'remember both your Duty to yourself and me. Permit not a vile Infidel to dishonour you, resist to death'.^{viii} Female virtue was determined in relation to men, rather than being seen as an innate moral quality. His comment reflects the belief that women's chastity constituted part of their husband's honour. Rogers notes that chastity was 'a virtue enforced by patriarchy and usually [implied] men's property right in women'. Yet she fails to account for the legal background and seems not to recognise the consequences of this legal position, showing surprise at the way in which Aubin's heroes view their wives, as 'property that would be disastrously damaged by rape'.^{ix}

Rogers does not allow for the possibility that Aubin is challenging this view of women by presenting it in all its objectionable absurdity. The scene owes much to romantic convention: heroines were expected to protect their virtue with their lives, partly in order to present themselves unsullied to the hero, thus reflecting legal concerns regarding inheritance. Rather than accepting the convention, it seems probable that Aubin is using it to question women's legal position; hence she presents relatively strong women and nondescript men. The romantic ideal of chastity may be an instance of female strength rather than passive acceptance of male-determined laws. Ardelisa seems to remonstrate with him for not recognising her strength, 'Fear not my Virtue, I'm resolv'd never to yield whilst Life shall last'(p.28).

The ugliness of the Count's language underlines the real physical threat and ensures that sympathies are directed towards Ardelisa. The Count is not a cruel man and clearly does not regard Ardelisa as an object but, in accordance with the law, he sees her chastity in terms of his honour and ultimately presumably in terms of legitimacy of potential heirs. His language must have seemed rather excessive even in the 1720s: it is too egotistical and fails to begin to see that rape would be a deeply personal injury to his wife: 'let me not be so compleatly curs'd, to hear you live, and are debauch'd'(pp.27-8). Aubin, being female, sees the real nature of rape and is aware that legally and publicly it is seen primarily as a property issue but that it is really a private threat, an emotional and religious issue in that her heroines genuinely believe in chastity for religious reasons.

Violetta feels she has not lived up to the romantic ideal of chastity: 'I submitted to the fatal necessity of my Circumstances'. Ardelisa's 'heroick Conduct' in resisting rape 'has convinc'd' her that she 'did not what [she] ought: She never would have permitted a lustful *Turk* to possess her, but, by his Death would have preserv'd her Honour; or, resisting to Death, not have surviv'd it'(p.91). Interestingly, she seems aware that, as Blackstone explains, 'The English law...justifies a woman, killing one who attempts to ravish her'(IV,p.181).

Violetta forgives her rapist and 'saw him with a Wife's Eyes, and thought [herself] oblig'd to do so'. Through Father Francis, Aubin provides a somewhat ironic view of Catholic precepts, on

which English canon law was based. He tells her, 'as you were single, a Virgin, and made his by the Chance of War, it was no Sin in you to yield to him, and it would have been wilful Murder to have kill'd him...nay, a Sin not to have been faithful to his Bed, whilst he is living you ought not to marry'(p.92), as if she had married him. Her feelings are not considered, since the only important issue is that the man has chosen her.

What differentiates Violetta's case from Ardelisa's is that when Violetta was raped, she did not already belong to a man: 'in *Ardelisa*, who was marry'd to another, it would have been a horrid Crime to suffer another Man for to possess her'(p.92). Ironically, the 'horrid crime' refers not to the rape but to the possibility of a woman not dying in an attempt to defend her husband's property rights vested in her. Rogers objects to Violetta's situation as 'the most ludicrous example'(p.117) of men regarding women as property. Yet she does not recognise that this is an accurate presentation of the legal position. It seems impossible to imagine that an intelligent woman like Aubin could discuss this issue at such length, with a clear awareness of law, and yet fail to recognise the emotions it could raise in her female readers; indeed, she may have wished to raise such emotions in order to encourage greater awareness and consideration of women's problematic legal and social position.

In *Life and Adventures of the Lady Lucy*, Aubin again presents women's vulnerability in a masculine world, typified in sexual assault, for example when a nobleman attempts to seduce Lucy, slipping into her bed while she is asleep. In accordance with a well-worn novelistic convention, she does not realise until morning. She resists rape and so he threatens to spread scandalous rumours, knowing 'a Woman's Reputation always suffers by such Discourse, tho she be entirely virtuous'.^x

Fielding presents the same problem in *Amelia* (1751): Miss Mathews threatens to expose Hebbers as a seducer if he does not marry her but he sneers '*whose honour will you injure?*'.^{xi} Despite the tremendous social importance of female chastity and reputation, the law failed to protect women from slander. Blackstone admits 'the purest maid, or the chastest matron' can be called 'the most meretricious and incontinent of women, with impunity'.^{xii} He explains that a man was protected against 'malicious, scandalous, and slanderous *words*, tending to his damage and derogation', which might 'exclude him from society' or 'impair or hurt his trade or livelihood'. He did not have to prove damage resulting from slander but could sue 'upon the probability that it might happen'. Slander was not actionable for common people but was deemed 'an atrocious injury' to 'high and respectable characters'(III,pp.123-4).

Lucy is somewhat unfortunate, to say the least: Constantine later attempts to rape her and threatens that if she cries out and a servant comes, 'I'll kill him in your sight, and lay his dead Body by you; so that your Reputation shall be blacken'd, tho you are innocent'(p.112). Lucy courageously defends herself by stabbing him in the thigh with his sword and shows surprising presence of mind in explaining the rope ladder and blood on the balcony, by saying that she has defended herself against a thief. Fielding lampoons such vigorous defence of chastity later in the century in *Shamela* (1741), where Shamela openly discusses her defence techniques: 'After having made a pretty free Use of my Fingers, without any great Regard to the Parts I attack'd, I counterfeit a Swoon'.^{xiii}

Aubin presents the threat of rape from a woman's viewpoint, exposing the male-dominated social structure which empowers men and renders women vulnerable. However, in choosing to show Lucy's courage in outwitting her attacker, Aubin presents an alternative to passive virtue: Lucy is perhaps an early vision of the empowered woman; not politically emancipated but strong and crucially, victorious. Aubin reclaims a potentially tragic scene by humour, enabling the reader to enjoy Lucy's actions and encouraging her or him to identify with this strong and yet virtuous character.

Whicher argues that 'idealistic romances were generally justified as mirrors of all desirable virtues. Pious Mrs Penelope Aubin wrote no other kind of fiction', failing to recognise the more serious uses of such romances in terms of considering law.^{xiv} MacCarthy notes that Aubin 'endeavoured to weave together romance and realism' but does not recognise the place of law within this realism.^{xv} Richetti interprets Glandore's attempted rape of the married Belinda in *The Life of Madame de Beaumont* (1721) as part of 'the basic pattern of persecuted innocence'. He is right to

discuss the element of 'simple moral heroism' and Providential coincidence but it is unfortunate that the legal background to heroic defence of chastity is not even considered.^{xvi} Aubin's stand-point is clearly primarily moral but she shows awareness of legal realities and the way in which they disable women. The very fact that it is their piety and Providential intervention that saves them, not the law which ought to protect them, is surely an implicit indictment on the masculine legal system.

Richardson: *Pamela* (1740)

In *Pamela*, Richardson transposes the popular convention of heroines protecting their chastity into a seemingly incongruous area: the lower class. Pamela herself recognises society's economic evaluation of virtue: '*poor* peoples virtue is to go for nothing'. As Mr B's servant, Pamela is effectively his property; she later becomes his wife and the novel exploits the legal parallel between servants and wives as property. When she attempts to escape, he tells her, 'you *have* robbed me'.^{xvii}

For this reason, Pamela's insistence on seeing Mr B's sexual attempts in moral terms is comic to the other characters but it enables Richardson to question society's view of virtue and to expose its property origins, revealing a servant's virtue to be more profound than society's hypocritical notions. Pamela herself seems to concentrate on chastity, which gives rise to some misgivings on the part of the reader, who may share Mr B's feeling that her emphasis on her virtue may be somewhat 'stage-managed': after all, Pamela is always aware of her 'audience' and her fainting could be seen as playing to that audience: 'she has a lucky knack of falling into fits when she pleases'(p.98). The anonymous writer of *Lettre Sur Pamela* (1742) comments similarly, 'elle a des foiblesses de commande'.^{xviii}

The author of *Lettre Sur Pamela* describes Pamela as having no other advantages in life than her beauty and virtue, the famous 'diminutive mere Grain of Mustard-seed':^{xix} 'une jeune fille qui n'a d'autres avantages que ses attraits et sa vertu'(p.5). The marriage is viewed as a reward for her virtue, which 'couronne enfin la constante sagesse de la vertueuse Pamela'(p.6). The word 'sagesse' or 'wisdom', together with the ironic tone, suggests Pamela is aware of the financial value of her 'virtue'. The author later refers overtly to the 'price' of virtue, as determined by social convention and fashion, 'il y en a dans le monde de ces choses qui n'ont d'autre prix que celui que la vogue y met'(p.38). Fielding criticised the social hypocrisy engendered by such ideals, commenting wryly, 'how extremely natural virtue is to the fair sex...virtue they can all admirably well put on; and as well those individuals who have it not, as those who possess it'.^{xx}

Pamela's fainting is problematic because we may feel that Mr B's suspicion that she controls her fainting is not entirely unfounded. However, *Pamela* was written 'to set VIRTUE in its own amiable light'(p.31) and it is reasonable to assume that Richardson intended Pamela to appear virtuous. He establishes a Christian family background for Pamela, perhaps to add credence to her status as pious heroine. Steeves recognises that 'Richardson makes his whole case for virtue on pious grounds'(p.72), but he also notes its "'commodity" value', arguing that Pamela, far from being prudish, shows 'good sense', since 'sexual freedom generally meant for a woman satiation, abandonment...and ultimately complete degradation'(p.73).

McKeon links the sexual struggle between Pamela and Mr B to their struggle for 'epistemological status'(p.358), with Mr B regarding power as 'the ability to make others accept one's version of events as authoritative'. He argues, without taking into account the rather excessive nature of the infatuated Mr B's comments to Pamela, 'To B., Pamela is a witch, a sorceress, an enchantress, an artful gypsy who transforms reality', claiming that Mr B works 'to reverse the spell of Pamela's progressive plotting' with what he calls aristocratic 'inventions', an ingenious term for attempted rape. He argues: 'Although the rape of Pamela can appear to be Mr B's irreducible and obsessive desire, his real view seems to be that it is a distastefully crude expedient for enacting' what McKeon regards as 'the venerable aristocratic plot that is his genuine ambition'(p.359).

McKeon regards Mr B's attempt to deceive Pamela by the sham marriage as a 'touchingly inadequate' attempt to reconcile her 'elevated position' in 'the servant hierarchy' with the

impossibility of marriage as he sees it. Hence 'the proposals soberly imitate the concerns of a formal contract'(p.372). Mr B may give Pamela the jewels intended for the gentlewoman he was to marry but the contract seems to be part of a long line of deceptions, a means to accomplish what he failed in his rape attempts, rather than an expression of concern for her status.

The 'articles' of his financial proposals do indeed resemble those of marriage settlements but the language is threatening: '[your] answer, will absolutely decide your fate'(p.227). He even offers the possibility of marriage in the future but this should not blind the reader: his document effectively makes provision for Pamela as a mistress, or 'low-born prostitute'(p.231) as she phrases it. It seems probable that Richardson also conceived of the proposals in a moral context, rather than purely as an attempt to resolve class conflict.

Watt reads *Pamela* simply in terms of class struggle, arguing that Pamela and Mr B's conflicts 'mirror larger contemporary conflicts between two classes and their way of life'.^{xxi} Richardson was clearly very conscious of class issues but seems primarily interested in moral questions. *Pamela's* sub-title, *Virtue Rewarded*, provides a key to the way Richardson wishes us to interpret the novel. In the Preface he does not claim to be promoting resolution of class problems but 'to inculcate *religion* and *morality*'(p.31). Such a Preface owes much to literary convention but Richardson does seem to have genuine moral concerns.

McKeon argues that the attempted rape is intended to force Pamela to accept the proposals and that, 'by assuming the levelling disguise of a servant girl' Mr B attempts to 'lower himself to her status'(p.372). This does not account for the ugliness of the language in this scene, which underlines the reality and brutality of the threat. Rakes dressing as women in order to seduce or rape is a recognised motif in fiction, for example Biranthus in *The Female Quixote* (1752). McKeon may interpret the situation in terms of class but Mr B seems conscious of baser motives, 'trembling like an aspen-leaf'(p.241) and threatening that if she does not 'comply with [his] proposals, [he] will not lose this opportunity'(p.242) for rape.

Mrs Jewkes, a grotesque example of feminine betrayal or 'vile unwomanly wickedness'(p.245) as Pamela phrases it, helps Mr B hold Pamela down and incites him to rape, 'Don't stand dilly-dallying, sir. She cannot exclaim worse than she has done; and will be quieter when she knows the worst', as if she has been involved in such situations before. Abetting rape was a felony but it is reasonable to assume that Mrs Jewkes expects Mr B's status to shield both him and herself from prosecution.

Like Lovelace, Mr B has seduced a number of women but has misgivings about rape, 'I abhor violence'(p.242). Lovelace is clearly more dangerous than Mr B but one wonders if Mr B would be equally dangerous if he had Lovelace's intelligence and attractive form. Mr B does not act on Mrs Jewkes's suggestions because, unlike Lovelace, he is afraid. This allows Richardson to recuperate the text from potential tragedy and to bring about resolution and eventual marriage. However, unlike McKeon, he approaches rape in a serious manner, showing surprising understanding for women's feelings about rape and for the real physical and mental threat it poses.

Mr B does not pose the same magnitude of threat as Lovelace but his social position and powers as a Justice put Pamela in real danger. Smollett exposes this situation in *Roderick Random* (1748) when a Justice attempts to rape Narcissa. Roderick prevents the rape and is warned that 'being...in the commission, [Sir Timothy] will immediately grant warrants for apprehending' him. Mrs Sagely tells Roderick, 'If you should be apprehended, he will commit you to jail, where you may possibly languish in great misery till the next assizes, and then be transported for assaulting a magistrate'.^{xxii} If Mr B did rape Pamela, her father would probably not have the means to take him to court and even if he did, Mr B would face a jury of his own class, since, as Blackstone explains, 'a nobleman shall be tried by his peers'(I,p.401). Upper class attitudes to rape of the lower classes are summed up in Sir Simon, who argues that Mr B 'hurts no *family*' by trying to seduce Pamela. Mr B represents the ruling classes and their laws. Richardson criticises not only the legal view of virtue as property but also aristocratic privilege and lack of protection for the poor.

By insisting on interpreting *Pamela* purely in terms of class conflict, McKeon and Watt trivialise the attempted rapes, denying the physical reality of rape and the associated moral issues. It

is generally recognised that *Pamela* exposes aristocratic power but it also presents women's vulnerability before the law. Attempted rape is both a real threat and the ultimate image of female vulnerability, exacerbated for Pamela by her servant status. Richardson returned to the same subject in *Clarissa* but with a more tragic eye.

Clarissa (1747-8)

Female vulnerability before the law is even more explicit in *Clarissa*, with an unprecedentedly detailed account of rape and the associated laws. Rogers comments that 'In *Clarissa*, Richardson set up a situation which powerfully dramatized the oppression of women'(p.126). Yet she does not relate this oppression to women's legal disabilities, which the novel clearly exposes. Brissenden also notes the 'range of social and moral significance' in the novel but fails to account for the law. He politicises the rape, arguing that it 'is a struggle between the symbolic and ultimately heroic representatives of different social classes,' together with 'different moral and intellectual attitudes, different visions of life'. He notes rightly that '*Clarissa*...is not an allegory' and that despite the 'mythical and ideological proportions' of their struggle, 'The confinements and tortures to which Clarissa is subjected have an authentic physical reality'.^{xxiii} It is unfortunate that he does not recognise the legal context which informs this 'reality'.

Some commentators seem strangely immune to the rape itself. Warner suggests that the 'rape is the most cogent response to Clarissa's fictional projection of herself as a whole unified body', which distances us from the violence and immorality of rape.^{xxiv} Eagleton criticises Warner for this example 'of the truly reactionary nature of much deconstructionist 'radicalism', once divorced from the social and political contexts it so characteristically finds hard to handle'. Yet he seems dangerously close to Warner, arguing that 'Daunted by her 'phallic' wholeness...Lovelace must possess Clarissa so that he may reunite himself with the lost phallus, and unmask her as reassuringly "castrated"'. Given such comments, one must question Eagleton's own ability to understand the issue of rape as it is presented in *Clarissa*. Indeed he subsequently dehumanises Lovelace and Clarissa, reducing them to being 'complicit as units of textual "grammar"'.^{xxv} Blackstone defines rape more appropriately as 'the carnal knowledge of a woman forcibly and against her will'(IV,p.210); it is this which the novel presents, not a semantic game.

Eagleton argues that 'the sexual power struggle between Clarissa and Lovelace is a primarily rhetorical affair, a matter of strategic textual moves'(pp.44-5). He notes reasonably that 'it is by persuading Clarissa to "correspond privately" with him that Lovelace ensnares her'(p.47) but rather than explaining that her innocent letters expose her reputation by implying intimacy, he argues that they prepare the way for Lovelace 'to inscribe Clarissa with his penis rather than his pen'(p.48). Eagleton insists on sexualising writing regardless of its content, claiming that for Richardson's characters, 'writing is the greatest fetish of all' and that 'letters stand in for absent bodies'(p.59).

Eagleton's argument is flawed in that it presents too great a degree of sexual desire on Clarissa's part and thus goes some way towards implying reciprocal sexual interest and even exculpating Lovelace. Brissenden's argument also draws attention away from the physical threat of rape, claiming that Clarissa 'wants Lovelace to be not only her lover but also the one who punishes her independence and unconventionality', feeling subconsciously 'that, as a woman she should submit to Lovelace'(p.162). Watt also over-emphasises any love Clarissa may have for Lovelace, comparing them inappropriately to Romeo and Juliet(p.247). The text itself does not justify such interpretations: for Clarissa, Lovelace's immorality clearly outweighs his attractiveness.

Richardson emphasises the violation of Clarissa's trust, for she is under Lovelace's protection, her body, and her personal feelings concerning her virtue. The text clearly views the rape as a crime in terms of both secular and moral law; Eagleton fails to account fully for either. He seems to be aware that his reading is not one which Richardson would have anticipated: '*Clarissa* still poses an acute problem for us. Not a problem *consciously* posed by the text, but one that it can be persuaded to raise by a certain reading'(p.86). This chapter confines itself to the problems raised consciously by the text in relation to rape: moral values and the law.

Zomchick recognises the legal background to Clarissa's rape but concentrates not on explaining the legalities of Clarissa's case but on Lovelace as a 'juridical subject': 'Lovelace[s]...conscience and imagination are plotted upon the law's iron matrix, the axes of which are a respect for property and a willful disregard of the rights of the potential wife'.^{xxvi} Both Lovelace and Clarissa are conscious of the legal designation of women as masculine property but this was common to eighteenth-century society and not, as Zomchick seems to suggest, unusually evident in their relationship.

Zomchick argues that Lovelace 'tries to extenuate his guilt' after the rape 'by turning his and Clarissa's relation into a matter of property rights'(p.88). What he does not highlight is the fact that the law itself regards the issue primarily as one of property. Lovelace's comments reflect this legal view and, while not calculated to appeal to the reader, are not simply expressions of individual misogyny, as Zomchick implies. Lovelace's appropriation of legal language may remind us that he is a member of the ruling classes responsible for such laws and therefore relatively immune. It also emphasises Clarissa's vulnerability before laws reflecting such masculine interests. Zomchick agrees with McKeon that Lovelace 'attacks the conduits of the new honor' that is, 'the daughters [men] barter for status'(p.83), in order to feel empowered. It seems much more likely that he is simply playing sexual games as his rakish forebears had.

Zomchick rightly notes Lovelace's knowledge of law but does not recognise Clarissa's. He views Lovelace's observation that 'if once pardoned, all is over...in a crime of this nature there lies no appeal, as in a murder',^{xxvii} as 'characteristic of the lawyer'(p.93). Lovelace invites such comparisons, commenting to Belford that 'it is but glossing over *one* part of a story, and omitting *another*, that will make a bad cause a good one...What an admirable lawyer should I have made'. He is conscious for example, of the advantage he would gain in court from his letters to Clarissa, addressed to 'Mrs Lovelace', urging her, 'permit the solemnity of next Thursday', the day he proposes to marry her, 'to include an act of oblivion of all past offences'.^{xxviii} He hopes that the marriage will prove his ostensibly good intentions towards her and assuage her honour but he presumably also realises that if she marries him, any accusation of rape will be impossible, since a husband could not rape his wife. Her only hope would be if her father could prove that she had been coerced to marry. Zomchick implies that Lovelace's knowledge is unusual, part of his alleged 'juridical fancy'(p.82). However, such knowledge was not uncommon among young men of his rank, many of whom attended Blackstone's lectures.

In spite of his respect for Lovelace's legal knowledge, Zomchick argues that he is wrong concerning appeals, or private prosecutions, claiming that they could be brought for rape by the injured party. What Zomchick does not recognise is that this is irrelevant to Clarissa: the law would regard her father as the injured party and even if a sympathetic Justice wanted to help her, she would need a male friend to prosecute on her behalf because, being under twenty one, she has no legal identity. Blackstone explains that 'The only crime against one's relation, for which an appeal can be brought, is...murder or manslaughter'(IV,p.310), not rape, exactly as Lovelace explains. The issue hinges on who brings the prosecution: Zomchick assumes that Clarissa can but eighteenth-century readers would have realised that this would be impossible.

Women were constantly warned about rakes who might seduce them. Lovelace, a consummate rake, attempts to justify his behaviour towards women by arguing that 'the whole of their education is caution and warning against our attempts'(II,p.185). He endeavours to exculpate rakes such as himself by claiming 'that nine women in ten who fall, fall either from their own vanity, or levity, or for want of circumspection, and proper reserves'(p.664). This reflects popular opinion, which blamed women for allowing themselves to be seduced. Lovelace is not entirely unrealistic in commenting, 'their very grandmothers will acquit us, and reproach them...as having *erred against knowledge*'(II,p.217). Wollstonecraft argues in *Vindication of the Rights of Woman* (1792), 'Half the sex, in its present infantile state, would pine for a Lovelace; a man so witty, so graceful, and so valiant'.^{xxix}

Women were often accused of passive consent in rape cases, particularly if they became pregnant, since it was believed that pregnancy implied consent. When Clarissa's uncle asks her if

she is pregnant and Lovelace hopes she is, this should be borne in mind or we will fail to understand the insult to Clarissa and the probable negative effects if she became pregnant and tried to prosecute Lovelace for rape. Steeves does not take the legal context into account and so fails to see the importance of this question: 'It may not be a considerate question...yet it is a natural one. It is also one of interest to the reader'. The question is not 'natural' curiosity but a specific legal challenge by parties concerned with the possibility of gaining revenge on Lovelace by a rape allegation but also worried about the inheritance they will forfeit if Clarissa has a child by him because they could marry and legitimate it. Steeves comments somewhat contemptuously that 'Clarissa goes into throes of resentment that the question is asked, but she does not answer it!'(p.81). His interest in the question is almost prurient and utterly inappropriate given the legal background.

Despite admitting 'sportive cruelty'(p.557) Lovelace, like Mr B, claims to be against rape, 'Abhorred be *force*, be the *necessity* of force, if that can be avoided! There is no triumph in *force*! No conquest over the *will*'(p.657). His objection, however, arises from the feeling that force lessens the triumph of the rake's 'art' rather than concern for the brutality involved. His views concerning rape seem to be essentially egocentric and to deny the personal cost to women.

It was argued in the eighteenth century that an adult woman could not be raped by one man, unless she were unconscious or her faculties were impaired by drugs. Lovelace argues 'whatever rapes have been attempted, none ever were committed, one person to one person' without a woman's 'yielding reluctance'(p.719). Clarissa explains 'I was first robbed of my senses; and then...of my honour'(p.985). She tells Mrs Norton 'the cruel spoiler...had recourse to unprecedented arts...to stupefying potions, and to the most brutal and outrageous force'(p.988).

The idea of drugging a woman in order to rape her was hardly 'unprecedented' in fiction: drugs appear to be a necessary part of an eighteenth-century would-be rapist's equipment. Hearne presents the same expedient in *The Female Deserters* (1719) when Torismond, 'perceiving that all fair means would be to no purpose', gives Calista a soporific drug which, conveniently, 'he remember'd he had in a Closet'.^{xxx}

Richardson dwells on the issue more than most writers, ensuring the reader is aware of the full horror of the situation. Lovelace refers to the drugging of Clarissa as a 'little *innocent* trick', his language suggesting that he is trying to exculpate himself in his own eyes. Some male commentators show surprising empathy for Lovelace: Brissenden, for example, argues that because Clarissa is drugged, it is 'a token rape only'(p.185). Lovelace claims that it is 'A contrivance I never had occasion for before' and that Mrs Sinclair suggested it, arguing that he agreed to it 'to lessen the too quick sense she was likely to have of what she was to suffer'. He shows some remorse, 'I think the poor lady ought not to have been so treated'. Yet even his apparent remorse owes something to egotism, 'But have not I the worst of it; since her insensibility has made me but a thief to my own joys?'(p.887).

Sleep was also thought to provide a good opportunity for rape. Lovelace seems aware of this tradition and comments to Hickman, 'Perhaps some liberty was taken with her, when she was asleep. Do you think no lady ever was taken at such an advantage?'. He suggests that women are aware of the risk, 'ladies are very shy of trusting themselves with the modestest of our sex, when they are disposed to sleep; and why so, if they did not *expect* that advantages would be taken of them at such times?', again implying passive if not active female consent. Alcohol was thought to be equally propitious to rapists. Lovelace, perhaps feeling that alcohol would be deemed less shocking than the use of drugs, suggests that it might have been the deciding factor. He asks Hickman, 'Do you think the most cautious woman in the world might not be cheated by a stronger liquor for a smaller'(p.1094).

Rape was not of course simply a crime committed by men against women, a point which is exploited in many eighteenth-century novels; *Clarissa* presents one of the most shocking instances of such female betrayal. Clarissa tells Anna Howe that she was tricked back into Mrs Sinclair's house 'by blacker hearts of my own sex'. She writes 'I dare not aver that the horrid creatures of the house were personally aiding and abetting'(p.1011) but the reader knows that they were actively involved.

Clarissa suggests that such women are unnatural: 'Women to desert the cause of a poor creature of their own sex in such a situation, what must they be!'(p.757). Lovelace however, is far from surprised: 'there have been more girls ruined, at least *prepared* for ruin, by their own sex (taking in servants, as well as companions), than *directly* by the attempts and delusions of men'(p.865). Lovelace is driven to rape not simply by lust, pride and a desire for revenge on Clarissa's family but by Mrs Sinclair's taunts and inflammatory comments.

The law regarded rape primarily as a violation of property, not as a moral issue, as Clarissa sees it. Blackstone explains that 'notice is only taken of the wrong done to the superior of the parties' and admits 'the loss of the inferior by such injuries is totally unregarded'. He explains that 'the inferior hath no kind of property'(III,p.142) in the superior and so 'can suffer no loss or injury'(p.143).

Clarissa's attitude to the rape provides a moral and religious standard by which to judge other characters' views. Most of the other characters view the rape principally in its material aspects, denying the personal insult to Clarissa and regarding it as a slur on family honour or, in the case of Mrs Sinclair, as a means of potential recruitment to prostitution.

Lovelace reflects the legal viewpoint, referring to rape as theft, arguing that he 'ought to be acquitted of everything but a common theft, a private larceny'(p.1439). He even tells Belford that he looks forward to seeing her 'look with conscious guilt, that will more than wipe off [his] guilt' from an attempted rape 'when she sees her injured lover, and acknowledged husband, from whom, the greatest of felonies, she would have stolen herself'(p.757). Felonies were capital offences: Lovelace is suggesting that the rape was a minor crime but that Clarissa's flight was serious. Lovelace's comment provides a kind of *reductio ad absurdum* of the laws which regarded women, and thus rape, in terms of property.

Lovelace's use of legal language to support his rakish humour provides an implicit criticism of the law. Through Lovelace, Richardson is perhaps criticising Lovelace's peers, responsible for the laws he finds amusing but which many female readers at least, find offensive. Interestingly, Lovelace assumes the proprietorial rights of a husband. If they were married, the law would indeed regard Clarissa's flight as depriving him of his property. Since Clarissa is not married, the law would regard her as her father's property and so Lovelace has in effect stolen her from her father. Clarissa hopes for 'the paternal protection from further ruin'(p.987), knowing that this is her only hope, both socially and legally. Lovelace realises that since Clarissa does not have her father's legal protection, she has no real possibility of legal redress.

Clarissa treats the rape laws very seriously, warning the Sinclairs that 'they had no way to avoid utter ruin but by opening their doors to her, or by murdering her' for 'what had been done to her was punishable by death'(p.964). Clarissa knows that those who assisted rapists were indicted as principal offenders in the crime. Blackstone explains: 'he who is present, aiding, and abetting'(IV,p.34) 'suffer[s] the same punishment as [the] principals'(p.39): death. Polly asks what 'is the indemnity^{xxxi} of a man who has committed the vilest of rapes on a person of condition'(p.965). She seems fully aware that the rape is only serious because Clarissa is 'a person of condition'.

Clarissa reflects common fears concerning appearing in court: 'suppose, as his actions by me are really of a *capital nature*, it were insisted upon that I should appear to prosecute him and his accomplices in a Court of Justice, how do you think I could bear that?'(p.1013). She declares, 'I would sooner suffer every evil (the repetition of the capital one excepted), than appear publicly in a court to do myself justice'(p.1019). Mrs Howe objects, 'what ravishers, would be brought to justice if *modesty* were to be a general plea, and allowable, against appearing in a court to prosecute?'. She suggests that if Clarissa does not prosecute, it will be 'surmised that she fears 'some...lurking love, will appear upon the trial'(p.1016). Richardson shows Clarissa's motives for not prosecuting to be virtuous by her promise to Anna that if Lovelace 'sets on foot any machination against you, or Mr Hickman...I will consent to prosecute him, although I were sure I should not survive my first appearance at the bar'(p.1021).

Mrs Howe expresses conventional morality, regarding the crime as 'the ruin of an innocent creature' but also as 'dishonour' to 'a family of eminence'. She argues that Clarissa 'ought to

overcome her scruples out of regard to her family, her acquaintance, and her sex, which are all highly injured and scandalized'(p.1017). The injury to Clarissa is seen in social, not personal terms, reflecting the legal position that rape is an injury to the father 'to his family, and to his honour and happiness'.^{xxxiii}

Anna argues that the law should '*oblige* an injured woman to prosecute', adding that seduction should be a capital offence, if 'no fault in [the woman's] will, appear[ed]'. It is worth noting that the word 'seduction' was often used in the eighteenth century when 'rape' would have been more appropriate. Interestingly, Richardson explains the distinction through a female character: Judith Norton tells Clarissa, 'you have fallen by the brutal force of a barbarous ravisher, and not by the vile arts of a seducing lover'(p.990).

Anna praises the Isle of Man's custom: 'If a single woman there prosecutes a single man for a rape, the ecclesiastical judges impanel a jury...if this jury finds him guilty, he is returned *guilty* to the temporal courts: where, if he be convicted, the...judge, delivers to the woman a rope, a sword, and a ring; and she has it in her choice to have him hanged, beheaded, or to marry him'. Anna jokes 'One of the two former, I think, should always be her option'(p.1017), presumably as a response to social convention, which often regarded marriage as suitable redress for rape. Blackstone explains that early English law had decreed that a rape victim '(by consent of the judge and her parents) might redeem the offender from the execution of his sentence' that is, death, 'by accepting him for her husband'(IV,p.212). Anna implicitly criticises English law in her feminocentric version of the traditional court process, presenting the woman deciding the rapist's fate because the crime is against a woman.

Anna urges Clarissa to prosecute, 'supposing it were to meet with the approbation of your relations'(p.1017). She is aware that the law will not allow Clarissa to prosecute Lovelace personally because she is under twenty one and thus dependent on her father to prosecute. A father could only bring an action against a seducer or rapist if he could prove that his daughter was, as a result of the rape, 'less able to assist him as a servant, or that' the rapist 'in the pursuit of his daughter was a trespasser upon his premises'.^{xxxiii} This only protected girls whose parents could afford to keep them at home, where they could be regarded as being in their fathers' service. The action for loss of services, established by 1700, was also used to compensate women who had been seduced and who had insufficient evidence to sue for breach of marriage promise. Blackstone defines trespass rather broadly as: 'any transgression or offence against the law of nature, of society...whether it relates to a man's person, or his property'(III,p.208). Lovelace could be prosecuted under this law but Clarissa recognises the potential problems: 'when it came to be seen that I had consented to give him a clandestine meeting' and had lived 'under one roof with him for several weeks...without *cause* of complaint'(p.1253).

Lovelace is guilty not only of rape but of abducting an heiress, which was a felony without benefit of clergy. The law reveals its concern with property in declaring that, as Blackstone explains, 'the indictment must allege that the taking was for lucre'. This does not apply to Lovelace but Clarissa's inheritance would provide useful evidence if her family wished to claim that Lovelace did indeed want her money. The law stipulated that 'It must appear that she was taken away against her will'(IV,p.208) and this clearly worries Clarissa. Yet Blackstone notes that even if a woman consented to leave her family, 'if she afterwards refuse to continue with the offender, and be forced against her will, she may, from that time, as properly be said to be taken against her will, as if she never had given any consent'(p.209).

Zomchick argues that Clarissa's case could be weakened by the 'need to "show dislike"' and her failing 'to contradict Lovelace's public assertions that they were married'(p.97). Yet Blackstone's comment demonstrates that this should not have posed a problem. However, there are potential difficulties: Blackstone notes: 'if she concealed the injury for any considerable time after she had opportunity to complain', it would 'carry a strong, but not conclusive, presumption that her testimony is false or feigned'(IV,pp.213-4). Clarissa is raped on June 12th and escapes from Mrs Sinclair's on June 28th but does not go to a magistrate. Blackstone notes that although 'there is no time of limitation fixed...the jury will rarely give credit to a stale complaint'(pp.211-2).

Blackstone explains that one of the factors which influenced juries was 'if the witness be of good fame'. Clarissa had an excellent reputation previously and could presumably produce character witnesses but if her family did not support her she would be vulnerable, particularly if the Sinclairs lied, enabling Lovelace to present her, as Blackstone phrases it, as 'of evil fame...unsupported by others'(IV,p.213) in testimony. Clarissa 'act[s] so as that [her] own heart shall not reproach' her but realises that, 'As to the world's censure, I must be content to suffer that'(II,p.378). For Clarissa, this is not simply a moral issue but a potential legal disadvantage. Clarissa sees the rape as personal, an attack on her virtue, not on her father's 'property'. Yet she is aware that if she appears in court, the issue will not be purely personal and the world will debate her moral behaviour.

Clarissa is aware that 'Little advantage *in a court* (perhaps bandied about, and jested profligately with) would some of those pleas in [her] favour have been, which *out of court*, and to a *private* and *serious* audience, would have carried the greatest weight against him', for example 'the infamous methods to which he had recourse'. She realises that the general attitude would probably be 'that [she] ought not to have thrown [herself] into the power of such a man'(p.1253) and refers to such a court hearing as 'pursuing a doubtful event, under the disadvantages I have mentioned'(p.1255). Bell comments usefully: 'The violated woman' seems not to have been viewed as a 'credible witness to her own character', being 'subject to gruelling and potentially humiliating examination in public. As a result, there is every reason to believe that such officially-sanctioned hostile treatment...led to rape being seriously under-reported to the courts...such cases as did come to trial were terrible ordeals'.^{xxxiv}

The Harlowes want to prosecute Lovelace for personal revenge: Arabella does not mention the injury to Clarissa when she writes, 'could we but bring him to the gallows, what a meritorious revenge would that be to our whole injured family'. Her comment about 'the innocents he has deluded, as well as the saving from ruin many others' seems to be an attempt to cloak the desire for revenge with respectable morality. She tells Clarissa that Mr Ackland and Counsellor Derham will visit her to ascertain the facts 'to found a process upon, if it will bear one with as great a probability of success as we are told'. She exploits the potential legal difficulties of the case to insult Clarissa, commenting maliciously, 'possibly you may not at present behave so prudently in some certain points as to entitle yourself to public justice'(p.1256).

Lovelace knows from experience that he need not fear legal redress seriously. He denies raping anyone, 'I should be loath to be put to such a strait. I never was'. He claims 'Miss Betterton was taken from me against her own will' and so 'her friends, not I, committed the rape'(II,p.148). Yet he argues 'It is cruel to ask a modest woman for her consent. It is creating difficulties to both'(II,p.147). He continues, 'rapes are unnatural things; and more *rare* than are imagined'(II,p.148). Lovelace seems to have a very idiosyncratic interpretation of the word 'rape'. He argues, 'there may be consent in struggle; there may be yielding in resistance'(p.557), telling Belford, 'thou dost not imagine that I expect a *direct* consent - My main hope is but in a yielding reluctance'(p.719). Miss Betterton died 'in childbed' yet Lovelace fears no redress, 'no process begun in her lifetime; herself refusing to prosecute. Pretty circumstances...to found an indictment for a rape upon!'(p.495).

Lovelace shows little respect for the law. He tells Belford, 'a rape...to us rakes is far from being an undesirable thing. Nothing but the law stands in our way...and the opinion of what a modest woman will suffer, rather than become a *viva voce* accuser, lessens much an honest fellow's apprehensions on that score'(pp.896-7). Lovelace knows that rape is punishable by death but is clearly not worried, joking 'a rake's neck is always in danger, if not from the hangman, from his own horse'(p.888).

He imagines Belford's objections to raping Mrs Howe, Anna and Clarissa: 'shall we not be in danger of being hanged for three such enormous rapes?' and states confidently, 'Yes, to be sure, when caught. But is there any likelihood of that?'. He seems to speak from experience, 'have we not been in danger before now, for worse facts?'. He is aware that 'there will be greater likelihood that these women will *not* prosecute, than that they *will*' and confidently asserts 'The country is more merciful in *these* cases than in *any others*'(II,p.421).

Lovelace imagines a court scenario, revelling in the potential for drama and self-display:

'even the judges, and the whole crowded bench, will acquit us in their hearts; and every single man wish he had been me! - the women, all the time, disclaiming prosecution, were the case to be their own'(II,p.422). He refers to it as a 'raree-show', imagining 'shoals of people following, with a Which is he whom the *young* lady appears against?'(II,p.423). Lovelace's vision is an extreme version of reality. Such a rape trial would indeed attract a great deal of publicity and a large 'audience'. Continuing his self-dramatization, Lovelace writes with heavy symbolism: 'I shall have a dozen or two of young maidens, all dressed in white, go to court to beg my life'(II,p.424).

Lovelace does not simply rely on personal charm in the face of the law. He confidently asserts, 'I shall get off for one - were it but for family sake', realising that 'There is no fear of being hanged for such a crime as this, while we have *money* or *friends*'(II,p.424). Clarissa writes, 'had the prosecution been carried on to *effect*, and had he even been *sentenced to death*, can it be thought that his family would not have had interest enough to obtain his pardon for a crime thought too lightly of'(p.1253).

Lovelace is aware of the legal bias in favour of the aristocracy, for 'peers are judges'(II,p.424) of peers. Real examples bear this confidence out: Lord Baltimore was indicted for rape but acquitted by his peers. He may have been innocent but he did judge it necessary to leave the country. Colonel Charteris was found guilty of raping a maidservant but was only imprisoned for a few years, despite the fact that rape carried the death penalty. He was ultimately pardoned by the King. Steeves comments, 'If the fiction of the time is only moderately reliable evidence, rape was not uncommon among men who felt that their position guarded them from prosecution'. He notes the frequent use of rape and attempted rape in eighteenth-century fiction and argues, 'the offender almost always enjoys immunity from prosecution, through wealth, influence' and 'above all, the usual unwillingness of the victim to make her predicament public'(pp.97-8). Lovelace confidently expects, at worst, 'taking [his] pleasure abroad'(II,pp.424-5) in exile and comments that if they are convicted they need only 'make over [their] estates, that the sheriffs may not revel in [their] spoils'(II,p.424), referring to the seizure of the estates of felons and exiles.

Eagleton argues that Richardson's '*conscious* desire in writing...was to assert the bourgeois and Puritan conception of marriage against the feudal-cavalier standards of Lovelace and the Harlowe emphasis on...property'(p.77). He notes rightly that 'the patriarchal structure of all known societies' determines that 'the fundamental unit of exchange...is women'(p.56). Yet his argument seems to redefine Richardson's ideological stance in terms of his own interpretation of the eighteenth-century philosophy of virtue. Richardson's concept of virtue is not simply class-related: it transcends bourgeois ethics, which often had economic roots and is more closely allied to Christian theology.

Eagleton finds Clarissa's virtue unrealistic, a 'grave parody of official moral ideology' which, when taken to extremes, reveals 'its corrupt reality'(p.49). He claims that her 'spiritual individualism is the acceptable face of the very system which kills'(p.87) her but this is clearly not the case. Social constructs of virtue indeed had 'corrupt' roots, as Eagleton argues, but Clarissa's virtue defines itself in opposition to such ideas rather than being a sublime presentation of them. He seems to confuse social morality masquerading as religious piety with Clarissa's genuine piety.

What Eagleton fails to consider is that Richardson may consciously be questioning the definition of virtue. Clarissa is not simply a bourgeois heroine but a profoundly Christian one who, by her Christian identity, implicitly criticises false piety. Clarissa's language reveals that she interprets issues in a Christian context. She lives on a different spiritual plane to Lovelace: 'My soul is above thee, man!'(p.646).

To claim that Clarissa's virtue is of the same nature as that defined by society is not only to insult her genuine spiritual convictions but to misinterpret the nature of her death. Eagleton politicises Clarissa's death into a conscious refusal of 'sexual oppression, bourgeois patriarchy and libertine aristocracy'(p.76). Watt dismisses it as part of 'a long tradition of funeral literature'(p.225). Rogers argues that Clarissa 'is doomed to fail, since her society will not allow a woman to live independently'(p.126). Yet as an heiress, Clarissa could live independently when she reached twenty one. Rogers ignores both the legal and the religious context. In secular terms, a man could

sue Clarissa's father on her behalf for her inheritance but in religious terms, Clarissa has no real alternative to death; the inheritance is irrelevant. Clarissa dies because her virtue, unlike that of society, cannot allow compromise. Commentators have generally failed to address this; hence the unsympathetic treatment of her filial piety.

Ironically, Lovelace approaches the true nature of Clarissa's virtue, wondering if she is 'an angel and no woman'(p.726). He admits, 'Such irresistible proofs of the love of virtue for its own sake - did I never hear of, nor meet with in all my reading'(p.902). The extent of Clarissa's feeling for Lovelace is debatable but Watt surely oversteps the mark in arguing that there may be a useful link between 'Harlowe' and 'harlot'. Watt, like many male critics, has difficulty with what he terms Clarissa's 'frigid virtue'(p.295) but Richardson clearly conceived of Clarissa as a pious exemplar, not in any way to be equated with a harlot. Eagleton dismisses Clarissa's 'unflawed identity' similarly as 'a fetish'(p.87).

Mrs Norton tells Clarissa after the rape, 'Your moral character is untainted'(p.990) and Anna reassures her that she has 'a virtue unsullied; a will wholly faultless'(p.1020). This issue was debated throughout the century. Antonia argues in *The Virgin Unmask'd* (1709) that a virtuous woman cannot 'lose her Honour, unless she be ravish'd; and then 'tis a Question, whether she loses it or not'. Lucinda replies, no doubt echoing popular views, 'a Woman that is murder'd, loses her Life as much as she that dies of a Fever.'^{xxxv} Mr B tells Pamela, 'how will you forfeit your innocence, if you are obliged to yield to...force...you'll have the merit, and I the blame'(p.63) for any rape. Wollstonecraft criticised Clarissa's response in *Rights of Woman*: 'miserable beyond all names of misery is the condition of a being, who could be degraded without its own consent!'(p.166).

Clarissa's virtue is presented not simply as sexual but as a form of moral strength: Anna refers to it as 'majesty', 'native dignity' and 'heroism'(p.749). Lovelace testifies to the dichotomy between socio-legal concepts of virtue and genuine moral absolutes, admitting 'incredulity that there could be such virtue (virtue for *virtue's* sake) in the sex'(p.1344). He argues that Clarissa's virtue is unusual and so claims, 'how knew we, till the theft was *committed*, that the miser did actually set so romantic a value upon the treasure?'(p.1438). His use of language shows that, like many others, he regards female virtue as a 'treasure' kept by a 'miser', as property. Yet he also dismisses it as 'romantic', viewing it in terms of sentimental heroines rather than from a Christian stance.

Lovelace's attitude is not entirely without foundation, for he has seen numerous examples of female hypocrisy under the guise of virtue: 'have I not known twenty and twenty of the sex, who have seemed to carry their notions of virtue high; yet, when brought to the test, have abated of their severity?'. Lovelace refers to Clarissa's virtue as 'a niceness that has no example either in ancient or modern story'(p.886). The word 'niceness' suggests fastidiousness and manners, rather than serious moral concern. Lovelace's language and assumptions may be suitable for hypocritical 'society ladies' but are inadequate in reference to Clarissa.

Clarissa's vigorous defence of her virtue does indeed owe much to the traditions of romance, for example, when she threatens to kill herself with scissors, warning 'my honour is dearer to me than my life!'(p.725). Lovelace refers to her behaviour as 'romancing' and argues deprecatingly, 'At this rate of romancing, how many *flourishing ruins* dost thou, as well as I, know?'(p.869). Yet Clarissa's heroic virtue also derives from the Christian tradition of fortitude in the face of temptation. Clarissa is very much a Christian heroine and consequently, her motivation is more complex and her moral position more absolute than those of heroines from purely romantic traditions. The concept of the trial of virtue is part of the Christian tradition but Richardson 'feminises' it in his society's terms by focusing on sexual virtue. Harriet Byron accepts the necessity of trials, 'How shall we call virtue by its name, if it be not tried; and if it hath no contest with inclination?', but she is never faced with trials of the magnitude of Clarissa's.^{xxxvi}

Clarissa's rape is a complex topic encompassing moral and class issues but also law, a fact that commentators do not explore in any detail. Zomchick gives an interesting account of Clarissa's probable chances in a rape case in *Family and the Law* (pp.95-9) but does not consider the legal attitude towards rape, a view shared by Lovelace but repudiated by the text, which forces him and the reader to recognise the injury to Clarissa as an individual, rather than to Clarissa as Harlowe

property. This is the crux of the rape issue: the law is presented in detail but only to be criticised for its inadequacies in viewing Clarissa as property and in failing to protect her. Zomchick notes some of the relevant laws but fails to see the significance of their portrayal in the novel's legal critique. He approaches the law as a fixed entity which influences and empowers the characters, a force which he does not question. Yet for Richardson and his contemporaries, the law was open to moral scrutiny and discussion; *Clarissa* is part of this discussion.

Sir Charles Grandison (1753-4)

In *Pamela* and *Clarissa*, Richardson considers ideals of female virtue but in *Sir Charles Grandison* he presents a virtuous man. The masculine equivalent of female honour or chastity, which protected family lineage, was actively defending the family name. Mandeville described it satirically in *Fable of the Bees* (1714): 'In great Families it is like the Gout, generally counted Hereditary'(p.213). Masculine virtue has roots in epic tales and traditions of heroism and is usually presented as something akin to Hotspur's romanticised and heroic concept of honour in Shakespeare's *1 Henry IV*, often finding its expression in duelling.

The debate concerning masculine honour or virtue was centuries old. Falstaff asks in *1 Henry IV*: 'What is honour? a word...Who hath it? he that died o'Wednesday. Doth he feel it? no...Is it insensible, then? yea, to the dead. But will it not live with the living? no. Why? detraction will not suffer it'(V,sc.ii). His words provide an interesting comment on eighteenth-century attitudes.

Grandison reflects the ambiguity of eighteenth-century opinion concerning duelling. Sir Hargrave challenges Grandison to a duel and Grandison gives 'such an answer as a gentleman ought to give'. Harriet questions this masculine honour by placing it in a religious context, 'Murderous, vile word *honour!*...The very opposite to duty, goodness, piety, religion'(I,p.197). Richardson does not endorse duelling as an expression of masculine honour, as we see from the presentation of the quarrel between James Harlowe and Lovelace. Grandison's virtue is often presented in avoiding duelling. He has seen its negative consequences: his father once appeared to be '*mortally* wounded in a duel'(II,p.262) and although he recovered, the shock killed his wife. Grandison represents 'that true heroism which Christianity enjoins, when it recommends meekness, moderation, and humility'(p.263). However, when obliged to fight, he is very skilful, perhaps because Richardson did not want to alienate public opinion, which still supported duels concerning matters of honour. Forsyth notes that the public could often be sympathetic to duellists: 'Juries, indeed, might refuse to convict; but that was not the fault of the law'.^{xxxvii} Grandison's abilities are in keeping with his status as hero; Richardson has to reconcile the demands of literary heroism with moral concerns.

Blackstone makes it clear that duels were illegal; any killing was regarded as murder 'because of the previous malice and concerted design'(IV,p.185). Blackstone defines duelling as: 'where both parties meet avowedly with an intent to murder: thinking it their duty, as gentlemen, and claiming it as their right, to wanton with their own lives and those of their fellow creatures...in direct contradiction to the laws both of God and man'. He explains, 'the law has justly fixed the crime and punishment of murder, on them, and on their seconds also'(p.199). In 1708 Mawgridge was executed at Tyburn for killing William Cope in a duel. In 1729 Major Oneby was sentenced to hanging for killing Mr Gower in a duel.^{xxxviii}

Blackstone ascribes the practice of duelling to the influence of 'false notions of honour too generally received in Europe' and argues: 'law will never...eradicate this unhappy custom; till a method be found out of compelling the original aggressor to make some other satisfaction to the affronted party, which the world shall esteem equally reputable'(IV,p.199), recognising the problem of reconciling honour with law. Richardson considers the same problem in fictional form and is clearly aware of its complexity as a legal and moral issue: he condemns it as against both Christian and secular law and yet resorts to it when Morden kills Lovelace in *Clarissa*. The scene is reminiscent of myths regarding the Christian hero slaying the forces of evil but is also a suitably aristocratic way for Lovelace to die and, in eighteenth-century terms, to make amends to Clarissa's honour. Had Lovelace killed Morden, Richardson would presumably have seen it as murder but

Morden killing Lovelace appears to be something akin to divine justice. Lovelace tells Morden 'You have well revenged the dear creature'. Morden takes on a quasi-religious rôle, advising 'with the piety of a confessor...commend yourself to God'. Even Lovelace uses religious language, apparently repenting and asking Clarissa's forgiveness, 'Look down, blessed Spirit, look down!'(p.1487). His ultimate cry fulfils the demands of honour and religion: 'LET THIS EXPIATE!'(p.1488). Richardson attempts to resolve the dichotomy in Grandison, the skilled swordsman who resists duelling, seeking more honourable methods of resolution through discussion.

Richardson follows Christian tradition in presenting Grandison's chastity as part of his virtue. Charlotte tells Harriet that he is 'virtuous, even, as I believe, to chastity'(V,p.497). Richardson recognised that chastity was not usually considered to be a masculine virtue. Lovelace mocks Hickman, 'a *male-virgin*, I warrant!' and comments, 'women...like not novices'(p.802). Wollstonecraft notes later in *Rights of Woman*, 'in proportion as this regard for the reputation of chastity is prized by women, it is despised by men'(p.247).

Charlotte is clearly aware that chastity is not deemed a masculine virtue: 'I would not have my brother made the jest of one Sex, and the aversion of the other; and be thought so singular a young man'(V,p.497). Fielding's Joseph Andrews is one such 'singular...young man'. Joseph's position as a serious commentator on virtue is undermined by his comic presentation: he argues that he 'is the Brother of *Pamela*, and would be ashamed, that the Chastity of his Family, which is preserved in her, should be stained in him'. It would be obvious to an eighteenth-century reader that the 'stain' he is referring to is connected with patrilineal inheritance: his comment is absurd because as a male, he will not be bearing heirs and so his family cannot be 'stained' by his behaviour; he sees the stain as moral and Fielding seems to have some sympathy for this but it is a legal and social absurdity. When Joseph comments, 'What Riches, or Honours, or Pleasures can make us amends for the Loss of Innocence?', he breaks down into a parody of Pamela, rendering his argument amusing rather than convincing.^{xxxix}

Richardson suggests that Grandison is chaste but, in order not to compromise his status as hero, he is presented as adventurous, 'crossing dangerous seas, and ascending, through almost perpetual snows, those dreadful Alps...for the generous end of relieving distress'(IV,p.425). Grandison's supposed chastity may seem reminiscent of female virtue but his flirtation, especially with Lady Beauchamp, lessens the impact. When he recounts his visit to Lady Beauchamp, he seems to enjoy describing taking 'her half-reluctant hand'. He teases, 'I am a painter', 'let me...see less discomposure in your looks. I want to take my impressions of you from more placid features'. It is hardly surprising that she tells him, albeit with clear enjoyment, 'you have your arts', 'You are impertinent...a free man'(pp.273-4). Even Richardson, it would seem, capitulated in part to popular ideas regarding masculine virtue, presenting his hero flirting in a manner which would be unthinkable in Harriet. Interestingly, Harriet assumes that Charlotte is referring to Grandison when she comments that a man 'should be a Rake in his address, and a Saint in his heart'(VI,p.93).

However, Grandison, presumably speaking for Richardson but certainly speaking as the ideal male, challenges the legal double standard: 'How can that crime be thought pardonable in a man, which renders a woman infamous?'(III,p.140). Mrs Oldham, who before 'Sir Thomas made way to her heart...had an untainted character'(I,p.320), is cruelly treated by Everard Grandison. His strong moral stance is somewhat ironic: 'libertine as he was himself, [he] was very zealous to punish a poor Magdalen, who, *tho'* faulty, was not so faulty as himself'(p.355). Yet his attitude accurately reflects common assumptions: he acts as a foil to Grandison in Richardson's critique of the laws and customs governing moral behaviour.

Harriet articulates popular attitudes: 'women, whose glory is their chastity, must not yield to temptation'(II,p.320), recognising that 'women have more to lose with regard to reputation than men'(I,p.24). Grandison aligns himself with such attitudes: 'Chastity is the crown and glory of a woman. The most profligate of men love modesty in the sex, at the very time they are forming plots to destroy it'(III,p.52). Lovelace's behaviour certainly bears this out in *Clarissa*: 'Her virtue, her resistance...are [his] *stimulatives*'(p.716). Theoretically, men were supposed to protect women and their chastity. Grandison criticises any man who 'employs all his arts to seduce, betray and ruin the

creature whom he should guide and protect - Sedulous to save her, perhaps, from every foe, but the devil and himself!(III,p.140). This would provide an interesting comment on Lovelace.

Richardson seems to focus on masculine virtue in the novel but he also addresses female virtue. Harriet is not hypocritical but she is aware of the social pressure facing women as they determine their moral conduct. When Grandison presses her to marry him she asks, 'can a woman be wholly unobservant of custom, and the laws of her Sex?'(VI,p.100). Her reticence is partly genuine but partly imposed by social concepts: she uses social mores as a rationale for her own behaviour. Such modesty was encouraged as part of the acceptable social ethos of feminine morality which kept women passive and pure, thus easily manipulated in the marriage and inheritance cycle.

Grandison is Richardson's answer to the vexed question of what constitutes true masculine virtue. His rôle as protective hero is a literary convention but he also represents the aristocracy and thus the law and so unlike Pamela and even Clarissa, he can express his virtuous standards actively: rather than being a victim of the law, he has the option to use it as a positive force. Popular narrative motifs such as Harriet's abduction and 'fallen' women like Mrs Oldham enable Grandison to hear deserving cases, weigh up evidence and dispense justice as a Justice would but in an active manner as the rescuing hero. Richardson is thus able to reconcile the demands of literary heroism with his concerns regarding virtuous behaviour in an often hypocritical social environment.

Through Grandison Richardson is able to consider virtue in the masculine or public realm. Richardson's ideal is not female emancipation in twentieth-century terms but men like Grandison protecting the weak. Grandison does this as a Christian hero but also as a figure of legal authority: he is Emily's guardian and also acts as such for Charlotte and, to an extent, for Harriet, when she cannot be under the legal protection of her own family. As a representative of virtuous paternalistic aristocratic power, Grandison represents an ideal held by many during the period, an ideal still to be seen at the end of the century in Burney's Orville and later Austen's Darcy and Knightley.

Given Richardson's clear moral intentions in writing *Grandison*, it is important to interpret the novel in moral terms. However, one must not over-emphasise the moral scheme to the detriment of other concerns. Mullan argues usefully that Grandison is Richardson's idea of a 'good man', noting that Grandison is a figure of moral authority, in whom Richardson tries to redeem masculine power by reconciling it with feminine sensibility. However, he does not recognise this power as in any way legal. Grandison is not simply a moral figure but an ideal representative of the ruling classes, dispensing justice throughout the novel, albeit not in court, in a manner whose equity criticises the actions of lesser men as Justices. Grandison provides a moral corrective to the law: instead of prosecuting Sir Hargrave for abduction, for example, he seeks to convert him. Likewise, rather than casting out Mrs Oldham as the law would enable him to do, he treats her with respect and equity.

Issues such as duelling and chastity are both moral and legal; likewise, Grandison's position is a dual one: his actions are moral rather than explicitly legal but he is an embodiment of Christian justice and as such embodies the qualities of an ideal Justice. For Richardson, the law lacks a sufficiently strong moral framework to be truly just. It is not by accident that it is not the law which helps Harriet or Mrs Oldham but Grandison. We cannot simply dismiss *Grandison* as 'one of the most aqueous...[and] most stressfully sentimental novels';^{xi} it provides serious comment on some of the most important moral and legal issues of its time.

Fielding: *Tom Jones* (1749)

In *Tom Jones*, Fielding presents a number of what can be termed broadly as sexual crimes, discussing the relevant laws in some detail and exposing the double standard in the process. Partridge is brought before Allworthy to answer an adultery charge orchestrated by Mrs Wilkins. His wife torments him until he 'falsely...confess[es] himself guilty'(p.105). She claims she will 'take [her] bodily oath, that [she] found them a-bed together'. Fielding notes that the law wisely 'refuses to admit the evidence of a wife for or against her husband', which prevents 'much

perjury...whipping, fining, imprisoning, transporting and hanging'(p.106). Yet Allworthy believes that Partridge's 'confession, and the declaration of his wife, that she had caught her husband in the fact, did sufficiently prove'(p.107) his guilt.

Allworthy 'deprived [Partridge] of his annuity' and 'recommended repentance' and 'industry' to maintain his wife and children. Fielding comments with characteristic irony that 'much less [evidence] would have satisfied a bench of justices on an order of bastardy'(p.107) but gives us evidence denied to Allworthy 'to found a reasonable suspicion'(p.108) that Jenny was made pregnant by 'a lad' living in the same house, rather than by Partridge. Partridge is not punished for the adultery itself: Jenny is not married and so he has not taken another man's 'property' and there can be no crim.con. trial. His wife may wish to punish him for adultery but the law will only punish him for fathering an illegitimate child, for which the parish would otherwise be financially responsible. Allworthy is a just man but he does make mistakes. Partridge is not punished severely but he is innocent and his life is affected adversely, which implicitly indicts the legal system and suggests inadequacies.

Jenny Jones is brought before Allworthy because she is believed to be the mother of an illegitimate child, Tom, and as such is legally responsible, together with the father, for the child's upkeep. Allworthy tells her that women who have been seduced 'are rendered infamous, and driven, like lepers of old, out of society'. He continues, 'If you have fortunes, you are hereby rendered incapable of enjoying them', presumably by disinheritance and 'if you have none, you are disabled from acquiring any, nay almost of procuring your sustenance'(p.67). Fielding comments that many women 'have sunk to the last degree of vice by being unable to retrieve the first slip'(p.74).

Neither social morality nor the law required men to be chaste and so women paid the price socially and legally; this was particularly clear in the treatment of single mothers. People were encouraged to notify the authorities if they knew a single mother living locally. The midwives' oath required midwives to question the mother during labour and refuse help if she did not name the father.

Allworthy is lenient towards Jenny: he could send her to Bridewell^{xli} but, believing in her sincerity and repentance, he tells her, 'I will take care to convey you from this scene of your shame, where you shall, by being unknown, avoid the punishment which...is allotted to your crime'(p.68). Fielding comments, 'they very rarely...improve their morals, at the House of Correction'(p.184). Allworthy spared Jenny because otherwise 'all hopes of reformation would have been abolished'(p.73). Allworthy asked Jenny who the father was 'to punish the fellow'(p.69) but the law did nothing if the woman did not give a name. Allworthy later arrests Molly for becoming pregnant and refusing to name the father. Tom protects Molly by claiming to be the father. Allworthy combines Christian morals with legal precept, believing Tom has broken 'the laws of God and man'(p.185) and is primarily responsible.

Generally women were punished more severely for fornication than men. Thwackum is in favour of the 'wholesome rigour of the law, which allots a very severe punishment to loose wenches'(p.241) but not men. Deborah Wilkins hopes Tom's mother will be 'committed to Bridewel; and whipt at the cart's tail'(pp.56-7). Attitudes to illegitimate pregnancies were based on legal views of women as masculine property and fear of unmarried mothers as an economic drain on a parish, rather than simply on morality.

Eighteenth-century law appears to take a strong moral stance on sexual issues. Tom Jones's response to his presumed incest with his 'mother' owes much to a parody of sentimental literature, with 'violent and frantic agonies' and the comically obtuse 'Incest-with a mother!'(p.815). Yet the underlying issue was very serious. Incest was a capital offence but not simply due to moral outrage: it caused serious problems in inheritance because any resulting children could not be legitimate heirs.

Bell comments that 'sexual desire seems virtually anarchic' in eighteenth-century fiction, 'disfiguring the hierarchical understanding of society while being beyond the reach of legislation'(p.224). Tom's sexual adventures may indeed seem anarchic in that they are not controlled by law and they involve women across the social spectrum, from Molly Seagrim to Lady

Bellaston. However, these adventures are derived partly from his picaro heritage and the comedy of the novel. The reason why legislation does not reach Tom is that he is male and does not father any children; far from demonstrating that characters are beyond legislation, Fielding shows that they are very much in the grip of the law, from Molly and Jenny to Partridge. Indeed much of the novel is concerned with the legal position of those whose offences are not only moral but legal.

Equally, the novel evinces a clear concept of social hierarchy and the law: Bridget Allworthy does not face the workhouse despite her illegitimate child and Lady Bellaston appears to sin without fear because she has sufficient money to deal with the consequences. However, at the lower end of the social scale, the innocent Jenny is threatened with the workhouse for supposedly having an illegitimate child. Partridge also suffers under the law in a way which would be inconceivable in the upper classes, where sexual misdemeanours were a nuisance at most.

The social hierarchy in the novel is supported by the legislature, which determines punishment according to rank and gender. This legal inequity is part of the very fabric of the novel's discussion of sexuality and the law, a topic which inevitably lends itself to the comic enterprise but which also has a serious rôle in criticising a set of laws which Fielding, as a magistrate, would frequently have seen failing to deliver justice.

Amelia (1751)

In *Amelia*, Fielding again discusses laws concerning sexual behaviour, notably adultery. Steeves is not unusual in interpreting the sexual issues within the novel primarily in a moral context, for example, Booth being 'induced to connive at the demolition of his wife's honor...to buy the influence which might lead to his restoration to official favor and advancement'(p.126).

There is a clear moral register to the text but issues such as prostituting one's wife, seen blatantly in the Trents' marriage, are also legal, readily recognisable from adultery and crim.con. trials, whose salacious details were avidly reported to a fascinated public. Steeves interprets Booth's adultery as an 'escapade'(p.130), considering it purely as part of his repentance and moral progress. Yet Fielding's vocabulary demands scrutiny for legal reference: he describes Booth's relationship with Miss Mathews as 'criminal conversation'(p.149), a reference twentieth-century readers are unlikely to note but which could not have escaped contemporary readers.

Fielding exposes the potential problems in the crim.con. laws in the Trents. Trent realises that a peer admires his wife and 'began to consider whether his wife was not really a more valuable possession' than he had thought. Trent orchestrates the affair and 'The peer fell plumb into this snare'(p.475). The focus here is not moral but legal, part of the novel's critique of laws concerning moral issues. Earlier in the novel Dr Harrison articulates the legal view that adultery 'is robbing [a man] of his property'(p.418). This scene is one of the many eighteenth-century humorous exploitations of the innate absurdity of the idea when taken to extremes.

The incident is presented in a humorous manner but with clear legal detail: Trent conceals himself and a witness in a closet, knowing that two witnesses are necessary to prove adultery and 'unkindly interrupted the action' of adultery. The lord, true to aristocratic honour, expects a duel but Trent tells him 'it would be the highest imprudence in me to kill a man who is now become so considerably my debtor', clearly referring to crim.con. The 'lord stipulated to pay a good round sum'(p.476) and to arrange for Trent to be promoted. Trent promises in return 'absolute remission of all past, and full indulgence for the time to come'(p.477). He effectively becomes a pimp for his own wife.

The crim.con. or criminal conversation action was an alternative to duelling, which was illegal. Blackstone explains that adultery was deemed to be 'a public crime' and so was 'left by our laws to the coercion of the spiritual [ecclesiastical] courts'. Yet it was also seen as a civil injury and so 'the law [gave] a satisfaction to the husband...by an action of trespass...against the adulterer'. Blackstone notes that 'the damages recovered are usually very large' and are determined by 'the rank and fortune of the plaintiff and defendant; the relation or connection between them: the seduction or otherwise of the wife, founded on her previous character and behaviour'(III,pp.139-40). Towards

the end of the eighteenth century many husbands secretly refused to take the money, preferring honour to financial gain, although crippling damages were still sometimes awarded.

The crim.con. action lent itself to abuses because it enabled Parliamentary divorces, which allowed both parties to remarry. Rich men could inevitably bribe poor women's husbands. Collusion between couples who wanted to divorce but could not legally do so without a crim.con. action became increasingly popular. It was not unusual for husbands and alleged lovers to conspire for a false crim.con. action to enable the husband to divorce and remarry. This was facilitated by the fact that circumstantial evidence sufficed and a wife could not defend herself in court.

Stone argues in *Road to Divorce* that selective transcripts of trials were 'a kind of didactic fiction drawn from real life, a substitute for the novel'.^{xliii} Such transcripts were clearly not fiction in a literary sense but they may have had some influence on novels in terms of thematic content: novels reflect their detailed interest in law; so much so that historians such as Stone can draw on them for contemporary comment on issues such as crim.con. Literary analysis benefits from inverting the priorities of social historians such as Stone, studying law in order to understand fiction, rather than seeking to use fiction to clarify legal history.

Fielding's tone when dealing with issues such as adultery is not primarily moral or didactic but legal, as is his vocabulary: in the case of the Trents, the focus is almost exclusively legal. Even when Booth is criticised morally for being unfaithful to Amelia, Fielding's vision reveals itself to be wider than commentators such as Steeves account for, encompassing the inadequacies of the law. Dr Harrison argues, presumably as Fielding's mouthpiece: 'the indulgence of [adultery] is protected by law and countenanced by custom', being no 'bar to [a man's] honour'(p.381).

Fielding discusses a variety of different punishments for adultery in *The Covent Garden Journal* numbers 67 and 68. Despite the apparent enthusiasm in his vivid descriptions of violent punishments such as pouring boiling water over the guilty and burying them alive, he is presumably not advocating such practices in England but he is criticising English adultery laws as inadequate: 'to have no Law at all against Adultery, is a small Defect at least in a Christian Society'.^{xliiii} Fielding's writing provides a moral corrective to inadequate laws. His tone is humorous, often mischievous, but his language is legalistic, reflecting his serious demand for a reconsideration of the law.

Smollett: *Roderick Random* (1748)

Alice Parker argues that Smollett's presentation of the law in his fiction is as a result of personal experience, particularly his imprisonment in the King's Bench for libel against Admiral Knowles in 1759: 'To trace Tobias Smollett's encounters with the law is to understand better...many relevant passages in his writings'. She comments that 'all of his novels...show the same curious ironic perversity in the treatment of legal punishment and the official administration of justice'.^{xliv}

What Parker fails to recognise is that such attitudes to the law were far from uncommon: Smollett's views were no doubt coloured by personal experience and his criticism was presumably exacerbated by personal grudges. However, his presentation of the legal system as a potential 'tool for the unscrupulous and criminal'(p.555) fits easily within a tradition of questioning the administration of law, from Swift to Fielding and Goldsmith and ultimately Godwin. If Smollett's comments on the legal system were primarily motivated by personal experience, one might expect him to concentrate solely on the injustices of the court and prison system. However, he reveals an interest in a wide range of legal issues, from problems concerning wills to clandestine marriage, attempted rape, prostitution, duelling and infanticide.

Smollett presents the issue of homosexuality in some detail. He presents the homosexual Captain Whiffle as an amusing affected fop, whom 'scandal' accuses 'of maintaining a correspondence with the surgeon not fit to be named'(p.200). Yet the aristocratic Earl Strutwell is more alarming because he is corrupt and exploitative. Strutwell defends homosexuality as being practised by the 'ancients' and 'celebrated poets' and widely practiced in the east, 'most parts of Europe' and 'gain[ing] ground apace' in England, trying to make it appear acceptable. He claims it will become 'a more fashionable vice than simple fornication' because it is healthier and does not

produce 'deserted bastards' to be a 'burden upon society'(p.307).

Smollett is clearly not a respectable legal critic and he exploits the shocking nature of the issue but, ironically, Strutwell is articulating the legal view of illegitimate children as a drain on property and using it as a rationale to justify homosexuality. Strutwell is a member of the ruling classes, albeit one without influence, and his comments encourage critical consideration of the law and the ruling classes, who claimed to promote virtue in their laws. Stutwell is 'notorious for a passion for his own sex'(p.309) but he seems immune from 'the severity of the law against offenders'(p.307) which he complains about. Banter warns Roderick that Strutwell is known to promise to help young men but that he robs them of their money and 'very often of their chastity'(p.310), yet the law does not reach him.

Homosexuality was one of many offences which created moral outrage but also problems concerning the production of legitimate heirs. An act of 1553, revived in 1563, made it a felony punishable by death, although Stone argues that there is little evidence regarding its enforcement, claiming that well-known wealthy homosexuals like William Beckford were never charged.^{xlv} Yet Steeves argues in *Before Jane Austen* that Beckford went abroad because of charges of homosexuality, amongst others(p.234).

Blackstone writes that the law treats 'the infamous *crime against nature*...in its very indictments, as a crime not fit to be named' and if both parties are 'at years of discretion'(IV,pp.215-6) regards it as a felony without benefit of clergy; hence offenders were hanged. Stone notes that there were many trials for sodomy and that in 1772 a Captain Robert James was executed for it. The usual punishment for attempted sodomy, or cases where there was insufficient evidence for indictment, was the pillory but this often meant death by stoning by the mob.

Not content with the scandalous topic of homosexuality, Smollett deals with a variety of other 'sexual crimes', notably prostitution. Miss Williams tells the archetypal story of a woman with 'beauty, good sense, and education' being 'reduced to such an infamous and miserable way of life as that of a prostitute'(p.121). She narrates her story of brutal treatment and exposes the fate of many 'favourites of the town', who are 'reduced to rags and filth, huddled together like swine', forced 'to pick pockets' to survive, 'detected; committed to Newgate' until they are 'discharged, because the plaintiff will not appear to prosecute'(p.141), presumably because he would not wish his illegal dealings with prostitutes to become known. The narrative appears to endorse Roderick's view when he refers to Miss Williams 'as unfortunate, not criminal'(p.142); Smollett assumes that the reader is aware of the prostitute's legal position as criminal and that we will therefore recognise this implicit criticism of an inequitable legal system.

Miss Williams is presented as a victim of circumstance. The law, rather than being seen as a wholesome restraint on the immoral practices of such women, is shown to serve the hypocritical values of those who determine it. Miss Williams meets the appropriately named Mrs Coupler in prison who, 'having neglected to gratify a certain justice for the connivance she enjoyed, was indicted [for prostitution] at the quarter sessions' and 'committed to Bridewell'. She 'compromise[s] matters with the justices'(p.139) and is quickly bailed. Smollett cynically underlines the ease with which Justices could circumvent the law. While prostitutes could be imprisoned, flogged, or even stoned to death in the pillory,^{xlvi} their clients, some of them Justices, were not only immune from prosecution but able to trade judicial lenity for sexual favours. Smollett presents a prostitute escaping, 'through her interest with the justices, to whom' the prostitutes 'pay contribution quarterly for protection'(p.95). Fielding's Justice Jourdain explains in *The Debauchees* (1732): 'With the whores of Babylon did I unite; I protected them from justice; gaming houses and bawdy houses did I licence, nay, and frequent too'(I,sc.x).

Miss Williams is introduced 'as an innocent creature'. A Judge 'paid a hundred guineas for the possession of [her]'(p.131), after which her 'virginity was five times sold to good purpose'(p.134). Cleland exposed the social economics of 'virtue' in Fanny Hill, who realises that 'in the loss of a fictitious maidenhead, I should reap all the advantages of a native one'.^{xlvii} Fielding's Shamela makes the link between prostitution and 'vartue' overtly: 'I thought once of making a little Fortune by my Person. I now intend to make a great one by my Vartue'(p.342). Hays inveighed

against prurient masculine interest in virginity at the end of the century in *Emma Courtney* (1796): from chastity having been considered as a sexual virtue...Men are thus rendered sordid and dissolute in their pleasures'.^{xlviii}

Smollett uses issues such as prostitution for humour with a satirical edge, enjoying attacking those who formed the backbone of the legal system, albeit showing some genuine sympathy for characters such as Miss Williams. He also considers what was arguably the most important issue for eighteenth-century women: reputation. Women's reputations are presented throughout the century as frail and as one aspect of female vulnerability before the law, since they could not seek legal redress for slander. Roderick sleeps with Miss Lavement, his employer's daughter, who conveniently mistakes him in the dark for Captain O'Donnell. Realising her mistake subsequently, she behaved 'with more complaisance...knowing that it was in [his] power at any time to publish her shame'(p.109). Captain O'Donnell's reputation cannot suffer for the same offence and, provided he has enough money, he can take Roderick to court.

Men did not need to defend their reputations in sexual terms as women did but certain slanders could affect their social standing. When Roderick is accused of cheating at cards, he threatens 'to prosecute the Jew for defamation, and boldly offered to submit [his] cause to the examination of any justice in Westminster'. Smollett refers specifically to the legal concept of defamation of character; Roderick could pursue an action if he had the money but this was not open to women, unless they were legally independent. Roderick explains that the card players 'knew themselves too well to put their characters on that issue' and so 'dropped their plea'(p.314).

Roderick's case would rest on the fact that the Jew's comments could, in Blackstone's words, 'endanger him in law, by impeaching him of some heinous crime'(III,p.123), in this case, being a sharper, or cheat. If they were to try 'to take [Roderick] up by a warrant as a sharper'(p.314), they would be revealed as gamblers: cheating was illegal but so was gambling and so they could face prosecution. Blackstone explains that the statute 33 Hen.VIII.c.9 was passed 'To restrain this pernicious vice, among the inferior sort of people'; it prohibited 'to all but gentlemen the games of tennis, tables, cards, dice, bowls...unless in the time of christmas', under penalty of 'pecuniary pains and imprisonment'(IV,p.171). Theoretically, gambling on such activities was illegal even for gentlemen, although such laws presumably posed few problems to them because they and their friends were the magistrates who judged such cases. Blackstone complains, 'our laws against gaming are not so deficient, as ourselves and our magistrates in putting those laws in execution'(p.174).

Blackstone warns against sharpers, explaining that if they lose at play, they 'have it in their power to be still greater gainers by informing. For by statute 16 Car.II.c.7...the winner shall forfeit treble the value, one moiety to the king, the other to the informer'(IV,p.172). The statute 9 Ann.c.14 enacted 'that if any person cheats at play, and at one time wins more than 10*l.* or any valuable thing, he may be indicted thereupon, and shall forfeit five times the value, shall be deemed infamous, and suffer such corporal punishment as in case of wilful perjury'(p.173). Roderick has won one hundred and fifty guineas and so can ill afford to be taken to court, since even if he was not found guilty of cheating, the fine for gambling would be considerable.

Smollett assumes that we understand the laws concerning slander and gambling. What appears to be a comic low-life tavern scene, part of the picaro's dubious adventures before the ultimate discovery of his identity and his reconciliation with society, is in fact also a consideration of gambling laws. Hodges comments: 'The structure of [*Roderick Random*] is...consciously derived from the Picaresque school', noting the 'crowded hours of adventurous life by sea and land, in the tavern or the gambling-den'.^{xlix} He fails to mention the use of such picaresque elements in Smollett's critique of law: like Fielding in *Tom Jones*, Smollett exploits the panoramic nature of the picaresque in order to provide dramatic adventures but also to give a wide scope to his legal comments. Gambling was a popular eighteenth-century vice and provoked much debate; Roderick is attracted to it as a means of earning more money than he could gain by work, something which many people would no doubt have empathised with, but Smollett reminds us of the legal realities and the consequent threat.

Smollett frequently uses one of the most popular narrative conventions: duelling. Smollett reflects the ambiguity of popular opinion in his own way, deriving humour from Roderick's pretensions and yet retaining a clear sense of the seriousness of the violence. Duelling was associated with the upper classes and for this reason, Roderick issues a number of challenges, to support his claim to being a gentleman and to bolster his pride while gaining revenge. When he challenges Gawky, he has to borrow a sword, underlining comically the absurdity of his pretensions. When challenged by a coachman, Roderick refers to the proposed boxing match rather grandly as 'single combat' and tells him, 'I would not descend so far below the dignity of a gentleman as to fight like a porter', suggesting a duel. This earns him 'the title of Gentleman John'(p.227) among the servants.

Smollett presents duelling as a violent but strangely comical affair. When Roderick challenges Crampley, he is full of bombast, talking of 'punishing [Gawky's] perfidy, at the expense of his blood'(p.32) and being denied the pleasure by Gawky's hasty retreat to the country. He speaks similarly of 'indignation, which had boiled so long within me'(p.211) against Crampley. Crampley fires 'before [Roderick] could cock the other [pistol]'(pp.210-11) and Roderick is stunned. Ludicrously, Roderick comments with seeming seriousness, 'imagining the bullet had entered my brain, [I] discharged mine as quick as possible, that I might not die unrevenged'. Roderick's fate is not tragic but humiliating: he is stripped of his newly acquired finery, left in his 'shoes, stockings, breeches, and shirt'. Yet the comedy has an unpleasant edge; Roderick did injure Crampley: '[I] thrust my weapon into his mouth, which it enlarged on one side to his ear' and then 'cut the tendons of the back of his hand'(p.211) and he himself is brutally assaulted by Crampley's confederates.

Smollett does not take a moral position on duelling as Richardson does, although Narcissa seems against it: 'I understand, you have wounded [Lord Quiverwit] in a duel on my account...I hope I shall never hear of such desperate proofs of [honour and love] for the future'(p.365). Although he takes the law into account, he does not discuss it in detail, assuming that we know the laws and will recognise the comedy in Roderick consistently escaping punishment. Strap tells an officer that Roderick is going to fight a duel because he wants to protect Roderick. Roderick is arrested but released because he tells the officer that the quarrel was resolved without bloodshed; he adds a bribe for good measure. When he later duels with Quiverwit, the town believes that 'Quiverwit being dead of his wounds, [Roderick] had absconded, in order to avoid the cognisance of the law'(p.361). Roderick again escapes punishment because Quiverwit survives. Eighteenth-century readers would have realised that Roderick is fortunate: simply carrying arms was illegal and the law regarded duels as attempted murder. Smollett's presentation of duelling reflects the ambiguous attitudes current in the eighteenth century: he seems to enjoy the violence but recognises its illegality and will not endorse it, presenting it as a somewhat immature pastime and seemingly not taking it too seriously.

Mandeville commented in *Fable of the Bees*, 'Religion plainly forbids Murther, Honour openly justifies it'(p.233). Yet he argued 'The dread of being call'd to an Account keeps abundance in awe' and provides 'Satisfaction for the Injuries which the Law cannot take hold of'(p.231), as if it is an alternative to law. Colonel Bath voices traditional attitudes to honour in *Amelia*, 'A man of honour wears his law by his side'(p.370). Hamilton refers ironically to duelling's heroic image in *Munster Village* (1778), indicating that she believes it is becoming less popular: 'The gentlemen...have renounced the conduct of heroes. The custom of wagers is the happy succedaneum, and prevents much blood-shed'.¹ The presentation of duelling, as with other popular narrative motifs, varies according to writers and the genres they use but the legal position remains unchanged and attitudes towards it remain remarkably constant: there is fascination for the romantic element and some sympathy but condemnation of it as illegal.

Hodges comments deprecatingly, 'Appreciation of Smollett's work...apart from his contribution to our knowledge of the Navy in the eighteenth century, is a difficult task'(p.xiii). He largely ignores the novel as fiction, concentrating on its presentation of the navy in terms of social history. Steeves concentrates similarly on the autobiographical element in *Roderick Random*, together with the 'actual historical importance as an exposure of the abuses and cruelties of the

enlisted man's life and the all but unbelievable ignorance and incapacity of the naval command'(p.134). Both commentators fail to account for Smollett's consideration and satire of the law, which would have provided topical humour. If one is to argue that the novel has some value as social documentation in terms of its presentation of the navy, the law must also be taken into account in order to appreciate Smollett's documentation of wider social issues. It is also worth noting that Smollett is not writing a social document but a humorous novel.

Smollett presents us with realistic vignettes of eighteenth-century English life, dramatising the interests and concerns of the age, viewing the situations he presents with a humorous but pertinent eye. What appear to be simply popular narrative constructs are given a different dimension by his attention to legal detail and an ongoing awareness of the legal background to his characters' lives.

As such, Smollett's interest in law is not unusual but representative of fiction throughout the century. It is important that we view his work within the context of the law in order to appreciate fully the vitality and depth of its 'realism' but also the inventiveness of its comedy. Smollett's characters escape the clutches of the law not through Providence but through exploiting legal loopholes or simply bribing the appropriate people: their solutions are legally 'realistic' and provide comedy but with the serious edge of satire from a man who saw much to criticise within the English legal system and was unafraid to do so; *Roderick Random* is a fictional expression of this.

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

Wollstonecraft discourses at length on society's legal double standards, particularly in terms of the gendering of ideals of virtue. She quotes Rousseau in *Rights of Woman*: 'reputation is no less indispensable than chastity' for women because while a man, 'secure in his own conduct...may brave the public opinion...a woman, in behaving well, performs but half her duty; as what is thought of her, is as important to her as what she really is'(p.242). Wollstonecraft was aware that 'it is reputation, not chastity...that [women] are employed to keep free from spot, not as a virtue, but to preserve their station in the world'(p.241). Hence 'If the honour of a woman, as it is absurdly called, be safe, she may neglect every social duty'(p.247).

Wollstonecraft not only criticises social and legal concepts of virtue in polemical essays such as *Rights of Woman*; she presents in her fiction the disabilities they place women under. The tone of the fiction is reminiscent of the forthright polemical style of *Rights of Woman* but it appeals to the reader on a different level, demanding some imaginative involvement with the characters and eliciting some degree of sympathy. In *Wrongs of Woman*, for example, Wollstonecraft presents the problems caused by the lack of legal redress for a husband's adultery. Maria comments, 'where is [a wife]...to look for a compensation from the woman, who seduces him from her?'.^{li} The essential difference was that a man was not a woman's property and so there could be no question of compensation. Spender notes that 'Maria's lover is tried for adultery, for appropriating another man's possession' but does not address the legal background which Wollstonecraft sets out to criticise.^{lii}

Maria is unable to give evidence herself since women had no right to do so in adultery cases. She is able to instruct Darnford's lawyer 'to plead guilty to the charge of adultery; but to deny that of seduction'(p.142) and is fortunate that the Judge allows the 'paper' she has written to be read in court, effectively allowing her to make a deposition.

Maria refuses to see herself as the law does, as stolen property, and declares 'I voluntarily gave myself'. She states 'I was six-and-twenty when I left Mr Venables' roof', thus 'at an age to direct my own actions'. She asks rhetorically, 'the man who now claims me - was he deprived of my society...[?]' knowing, as twentieth-century readers will not, that loss of consortium was the legal basis of Venables's action. She continues, 'The question is an insult to common sense, considering where Mr Darnford met me'(p.144), that is, the asylum in which Venables had placed her. Maria's consistent use of specific legal terminology reveals her to be fully cognizant of the laws concerning her case. She is not really fighting her husband in court but the legal system which condemns a

woman who is leaving an unfaithful husband who tried to sell her to a friend. The law would not have condoned his behaviour but neither would it have been likely to accept Venables's behaviour as justifying her leaving. Twentieth-century readers must bear in mind the fact that Maria is viewed as Venables's property and it is on this that the case hinges, not on the rights and wrongs of their behaviour.

The novel was unfinished but notes indicate that there was a 'Trial for adultery' and 'A separation from bed and board is the consequence' but Maria's fortune is put into Chancery. Other notes indicate that she is 'Sued by her husband - Damages [are] awarded to him'(p.146). Others state that ultimately, Venables divorces Maria. Wollstonecraft considers several legal solutions but it is interesting that she only envisages Venables winning the court case. Wollstonecraft presents him as the main guilty party but realises that the law would see him as the injured party.

Maria articulates late eighteenth-century concerns that a man may have 'to pay severe damages to the man, who never appeared to value his wife's society, till he found that' he could be 'indemnified for the loss of it'(p.115), clearly referring to crim.con. Venables once tried to prostitute Maria but now 'commence[s] an action against Darnford for seduction and adultery'(p.140).

Women were taught to place duty above feeling, enabling men to control their sexuality and thus their rôle in the inheritance cycle in terms of child-bearing. The Judge in *Wrongs of Woman* articulates the social and legal position: 'What virtuous woman thought of her feelings?'(p.145). Wollstonecraft angrily refuted such teaching, clearly recognising that the underlying reasons were not purely moral as they purported to be: 'Men, more effectually to enslave us, may inculcate this partial morality...but let us not blush for nature without a cause!'(p.114).

Wollstonecraft criticised the double standards of English law relating to sexual behaviour throughout her writing. In *Rights of Woman* she commented that 'If an innocent girl become a prey to love, she is degraded for ever', despite the fact that she has not 'violated any duty'(p.241). She argued that when a man seduced a woman it should 'be termed a *left-handed* marriage, and the man should be *legally* obliged to maintain the woman and her children'. This may not strike twentieth-century readers as unreasonable but she is attacking fundamental aspects of eighteenth-century law, which determined that women must remain chaste in order to bear legitimate heirs but which laid men under no such obligation. Her argument that 'The woman who is faithful to the father of her children demands respect, and should not be treated like a prostitute'(p.165) is in deliberate radical contrast to legal standards, which did indeed treat women in this manner.

In *Wrongs of Woman* Wollstonecraft demonstrates realistically the problems women could face if seduced and abandoned, assuming that we realise that what was for men a costly mistake at most really could 'ruin' women's lives. Some women were so frightened by the social and legal implications of their 'fall' that when they became pregnant, they murdered their babies rather than undergoing public shame, loss of jobs and possible incarceration. Maids would lose their jobs if they became pregnant, even if they had been seduced or raped by their employer. Venables seduces a girl and 'After her delivery, she [is] thrown on the town; and die[s] in an hospital'(p.112). Jemima tells Maria that her employer 'by blows...and menaces, compelled [her] to submit to his ferocious desire' and raped her repeatedly. She became pregnant but refused to take the abortion-inducing drug that he gave her: 'I could not resolve to take this infernal potion'(p.83). She is thrown out and becomes 'utterly destitute'(p.84).

Abortion is presented throughout eighteenth-century fiction as a masculine expedient, generally refused by seduced women as a last show of virtue. Moll Flanders refuses abortion and will not even tell the reader about it because 'it would be but too much Encouragement to the Vice, to let the World see what easie Measures were here taken to rid the Women's unwelcome Burthen of a Child clandestinely gotten'.^{liii} Defoe's description of abortion as 'easie Measures' indicates he was not aware of the reality of the abortion procedure but wanted to make a moral point.

To avoid scandal, Jemima's 'master' sends her half a guinea, intending her to go to 'a house, where beggars, and other wretches, the refuse of society, nightly lodged'. He offers to speak to a 'friend, a parish-officer, to get a nurse for the brat [she] laid to him' but threatens her with the law, telling her 'if [she] wished to keep out of the house of correction, not to make free with his name'.

Jemima realises that her work prospects would be minimal if she had a child and, destitute, she turns to 'the potion that was to procure abortion'(p.84) and, in desperation, she swallows it, hoping to kill herself as well as her unborn child.

Blackstone explains that the law regards the right to life as beginning 'as soon as an infant is able to stir in the mother's womb'. Thus if a woman 'by a potion, or otherwise, killeth it in her womb' or 'if any one beat her, whereby the child dieth in her body'(I,p.129), it was considered manslaughter. Likewise, 'if the child be born alive, and dieth by reason of the potion or bruises it received in the womb, it is murder in such as administered or gave them'(IV,p.199).

Many women were driven to infanticide by sheer poverty, shame and fear of legal recriminations.^{iv} Blackstone explains that due to the difficulties in detection, 'by the statute 21 Jac.I c.27 [1624] a mother of a bastard child, concealing its death, must prove by one witness that the child was born dead; otherwise such concealment shall be evidence of her having murdered it'(IV,p.352); 'the mother so offending shall suffer death as in the case of murder'(p.198). The law regarding infanticide was strict and women found guilty of it were not infrequently executed. Hay notes a case in 1754, where 'the Chief Justice condemned a girl to hanging and dissection for murdering her baby'.^{iv} Contrary to the usual practice of English law, women accused of infanticide were regarded as guilty until proven innocent. The law did not alter during the course of the century but juries became more sympathetic to women. The law was reformed in 1803 by the statute 43 Geo.III,c.58., partly because doctors were known to have difficulty in determining whether or not a baby had been born alive.

Wollstonecraft's writing attacks not genuine moral standards but apparently moral laws based on conceptions of women as masculine property; laws which had been criticised throughout the century for allowing flagrant injustices and hypocrisy, for example, imprisoning a young woman who was raped by her employer and subsequently refusing to give her a job, thus precipitating her fall to prostitution. It is not sufficient to recognise in vague terms the social disabilities of women: Wollstonecraft is clearly aware of their legal roots. She guides the reader into the correct context by use of specific legal terminology which we must address in order to appreciate the depth and accuracy of her socio-legal critique.

Inchbald: *Nature and Art* (1796)

Inchbald's tone is markedly different to Wollstonecraft's in that it is less overtly polemical but they share similar areas of concern, notably laws which disadvantage women. Rogers argues that *Nature and Art* 'sardonically exposes social lies, pretensions, and complacency; but the book's only feminist concern is an attack on the overemphasis on female chastity'(p.196). Yet this is clearly not what the novel wishes to argue: Agnes's sexual activity with William is presented as morally wrong. Agnes is one in a long line of ruined maidens whose stories act as a warning to other women not to allow themselves to be seduced; what makes her unusual is that she is the heroine and the author shows a great degree of respect and understanding for her. Inchbald does not attack the ideal of chastity as Rogers suggests but the legal reduction of it to a property value: if Agnes were wealthy, her loss of chastity to William would probably result in marriage. Inchbald is criticising the same issue that Richardson had in *Pamela* but with a more fundamentally tragic eye: Agnes's chastity has insufficient property value to be protected by law and William, unlike Mr B, is not converted. Consequently, Agnes is punished for having an illegitimate child but William is not; both his class and his gender protect him.

Rogers argues that Agnes 'is the victim of the belief...that a woman who has lost chastity has lost all worth'(p.196). Yet Agnes is a victim not of genuine ideals of virtue but of the laws which governed sexual behaviour: Rogers does not make this vital distinction between genuine virtue and legal concepts of chastity. The novel is not concerned with society's 'overemphasis on chastity' but the laws which promulgated cruel inequalities depending on class and gender. The novel clearly has more than one feminist concern: Inchbald exposes the sexual double standard and particularly, the disabilities of women before the law. She also presents issues which were currently debated by

radicals such as Godwin, notably aristocratic privilege and misuse of legal powers.

Spender recognises 'the cruel irony' of Agnes facing her seducer in court and having 'no one to speak for her, for it is the judge who is responsible for her downfall, and who proceeds to pronounce her execution'(p.214). What she does not explain is that William does not recognise Agnes and is simply sentencing according to law; his behaviour in court is equitable, giving Agnes every chance to defend herself. He is indeed individually responsible and is condemned as such but Agnes's anonymity underlines the fact that he is representative of a system which blindly condemns women in a variety of ways.

The novel is far more specific in its concerns than Spender argues, charting Agnes's downfall after seduction in order to expose the legal and social network which condemned women even if they were seduced or raped. Inchbald clearly expects the reader to recognise the tragedy of Agnes's position and reminds us of the legal context. Although it was less common towards the end of the eighteenth century, women could still be publicly shamed for the loss of their virtue. We are told that Lady Bendham 'would remind the parish priest of the punishment allotted for female dishonour' and causes 'many an unhappy girl to do public penance, in their own or neighbouring churches'.^{lvi}

Up until about 1700 men and women were often stripped to the waist and whipped through the streets behind a cart. A 1609 act ordered the woman but not the man to be sent to a house of correction for a year. Blackstone explains that a second offence could be punished in a house of correction by hard labour and whipping and the woman could be incarcerated 'till she find sureties never to offend again'. Sureties were people who pledged to ensure that the offender would not re-offend. This might be an impossible clause for many women to fulfil and so they could be imprisoned in houses of correction for years. This only occurred 'if the bastard becomes chargeable to the parish' because the civil law regarded 'the very maintenance of the child...as a degree of punishment'. Such laws underline the legal concern with property, not morality and explain why the rich had little to fear from the laws concerning illegitimate offspring. In the seventeenth century, the shame punishment for fornication was confession in the parish church during the Sunday service, while carrying a candle and wearing only a white sheet. Shame punishments became less popular during the eighteenth century but Justices could threaten marriage or jail. Blackstone explains that two Justices could order the parents to be punished, 'but what that punishment shall be, is not therein ascertained: though...a corporal punishment was intended'(IV,p.65).

It seems to have been widely accepted throughout the century that the seduction or rape of poor women was less important than that of women of high rank, presumably because a poor man's 'property' had less legal recognition than a rich man's. An element of feudal thinking seems to have survived, in rakes at least, as if they were feudal lords with the 'right' to local virgins. When Richardson's Lovelace spares Rosebud, his attitude is very proprietorial. He refers to her as 'my Rosebud' and presents his decision not to seduce her as a great favour.

Inchbald's heroine 'Agnes had been taught the full estimation of female virtue'(p.272), yet William 'obtained her heart' and seduced her, arguing that he 'could never make her his wife'(p.273) because of the difference in rank. When she later felt ashamed and 'withheld her caresses', he became angry and vowed 'never to see her more'(p.287). Agnes sees his vow as a 'sentence'; 'the implacable tone in which the sentence was pronounced' foreshadows the trial when William will ultimately condemn her. She learns that she is pregnant and sends a letter begging to see him. Ironically, he echoes the traditional language of heroines, 'my honour is as dear to me as my life', his reply testifying to the difference between male and female honour: 'my word is a part of that honour...I shall keep my word'(p.288) not to see her.

In desperation, Agnes considers murdering her baby but is unable to bring herself to do so. Inchbald describes the incident with daring detail and yet pathos, the words 'little', 'half way' and 'trembling' encouraging sympathy for Agnes: 'Around [the baby's] little throat was a cord entwined by a slipping noose, and drawn half way - as if the trembling hand of the murderer had revolted from its dreadful office'(p.289). Henry finds the baby and take it to Rebecca to look after but her sisters find it. Her father insists, in accordance with law, 'confess your crime, and own the father'.

Through fear she 'owned herself the mother'(p.300) and declared Henry to be the father.

The case is taken before William's father, the Dean, the representative of ecclesiastical law, which dealt with fornication. We read, 'William drew up an affidavit as his father had directed...*in Rebecca's name solemnly protesting she was a mother, and Henry, the father*'(p.304). Inchbald shows clear awareness of legal terms and procedures. Ironically, 'William sat in judgement', as he will later, 'Henry stood arraigned as a culprit'(p.305) and the Dean 'issued his mandate against Henry'(p.307).

William argues that the single mother 'ought to have been immediately pursued, apprehended, and committed to prison', echoing his father's comment that she should have been 'detected and punished for her design of murder'. His father, the Justice, declares 'I will instantly commit her to prison for the attempt of putting [the baby] to death'(p.318). Henry defends the unknown mother courageously, 'the father was more deserving of a prison: the poor woman had abandoned only *one* - the man, in all likelihood, had forsaken two pitiable creatures'(p.304). The fact that William is the father is clearly ironic but because, as a Judge, he is in one sense a representative of the law, Henry's criticism is particularly interesting. William's double standards regarding sexual virtue are not merely personal but reflections of the law itself. Neither the law nor William would consider a wealthy man's responsibility for seducing a poor woman seriously. Henry is articulating a point of view that is more sympathetic to such women, presumably that of Inchbald herself. Henry meets Agnes fortuitously and she acknowledges the child is hers. Rebecca's father tells the Dean and 'attributed his daughter's false confession to the compulsive methods he had adopted in charging her'. The Dean agrees to send for Agnes, explaining, 'if she acknowledges the child, I will instantly commit her to prison for the attempt of putting it to death'; 'a warrant was issued' and, with an irony which will be maintained throughout the novel, Agnes is 'brought prisoner before the grandfather of her child'(p.318).

Inchbald continues to pay minute attention to legal detail: refusing to name the father, Agnes 'saw the mittimus written that was to convey her into a prison'. Fearing that 'she should expose [William] still more in a public court', where she would be obliged to name him, she asks to speak to the Dean privately. He articulates the legal position: 'No private confessions before a magistrate! All must be done openly'(p.319) but this is mocked by his readiness to listen when he learns he is related to the father.

Inchbald explains that the Dean was not an inequitable Justice: 'he would not inflict punishment on the innocent, nor let the guilty escape' but he, and by implication other Justices, 'in all particulars of refined or coarse treatment...would alleviate or aggravate according to the rank of the offender.' He charges the others 'to hush the affair up'(p.320). He tells Agnes 'That if she would resign the child, and keep the father's name a secret...the child should be taken care of' and she might 'receive some favours' but otherwise she would not 'be allowed, for the maintenance of the boy, a sixpence beyond the stated sum for a poor man's unlawful offspring'(p.321), further proof that Inchbald was aware of the relevant laws.

Agnes escapes punishment simply because the Justice learns that his son is the father. Yet she is still punished because she becomes an outcast: 'In vain she offered herself...as a servant'(p.328) but her appearance and 'her imperfect story, who and what she was, prejudiced all those to whom she applied'(p.329). Ultimately she becomes 'a servant of all work' for half the usual wages. Yet she loses even this when it becomes known 'that she [is] the mother of a child; that she wishe[s] it should be kept a secret'(p.335). We read that 'her lost character, pursued her wherever she went'(p.336) and she is driven to prostitution. Inchbald shows understanding for her predicament, as 'Sometimes, hunted by the watch, she affrighted fled from street to street'(p.346). We read that 'Her feelings of rectitude submitted to those of hunger'(p.336), 'the customary history of thousands of her sex'(p.346).

Agnes becomes involved in theft and forgery, for which she is arrested. Meanwhile, William has become successful, with 'rapid advancements in the profession of the law'(p.345) and has become a Judge. Ironically, he is presiding over the case of the woman he seduced and abandoned, thus setting her on the road to ruin. Before the trial we read, 'The day at length is come, on which

Agnes shall have a sight of her beloved William!(p.247). The tragic irony is heavy and sustained throughout the trial. Agnes hopes that William will recognise her and 'possibly befriend her cause' but fears his 'firmness to his word' will make him refuse to 'forfeit his oath of impartial justice'(p.348). Agnes 'heard herself arraigned'(p.349) before what Inchbald refers to ironically as 'the righteous judgment seat of William'(p.348).

Inchbald follows legal procedure carefully:

'When every witness on the part of the prosecutor had been examined, the judge addressed himself to her -

"What defence have you to make?"(p.349).

She is stunned by his voice and the kindness he affects as part of his judicial rôle. He asks 'Have you no witnesses? No proof in your behalf?' and, with heavy irony, 'Have you no one to speak to your character?'. Agnes cries, reminded 'by *whom* her character had first been blasted'. William's impersonal judicial rôle is stressed as he 'summed up the evidence' and, tragically,

'The jury consulted but a few minutes. The verdict was -
"Guilty"'

Agnes hears the verdict 'with composure' but in a dramatic crescendo, 'William placed the fatal velvet on his head, and rose to pronounce her sentence'(p.350) and she cries, understood only by the reader, 'Oh! not from *you!*' as she faints. Inchbald exploits the rituals of real court proceedings for dramatic effect, in this case the black cap worn by Judges when reading the death sentence. Hay notes in *Albion's Fatal Tree* that 'The powers of light and darkness' were suggested in the black cap worn when pronouncing the death penalty and the 'white gloves worn at the end of a "maiden assize" when no prisoners were to be left for execution'(p.27).

While Agnes is carried out, William 'adjourned the court to go to dinner'(p.351); this brutally stark comment reminds the reader that William's life has not been touched by actions which have led indirectly to Agnes's death. The reader is inevitably reminded of Pope's criticism in *The Rape of the Lock* (1712): 'The hungry Judges soon the sentence sign, / And wretches hang that Jury-men may dine'(III,l.21-2). Yet Blackstone himself admits the practice: 'in order to avoid intemperance', apparently quite a problem in juries, 'and causeless delay', juries were 'kept without meat, drink, fire, or candle, unless by permission of the judge, till they are all unanimously agreed'. If they had 'any eatables'(III,p.375) they could be fined and if they could not reach a verdict, the judges could 'carry them round the circuit from town to town in a cart'(p.376) until they reached one. William's behaviour may shock twentieth-century readers but it would have been depressingly familiar to those in the eighteenth century.

Dramatic justice intervenes when William accidentally comes across one of the popular accounts of criminals: 'The last dying words, speech, and confession; birth, parentage, and education; life, character, and behaviour, of Agnes Primrose, who was executed this morning'(p.352). The paper reads: 'being led astray by the arts and flattery of seducing man, she fell from the paths of virtue, and took to bad company...she hopes her death will be a warning' against the 'courtship of young men, especially...their betters; for they only court to deceive'. The account ends typically and one suspects more genuinely than most real felons' 'last words', with Agnes's repentance: 'she acknowledges the justice of her sentence, not only in respect of the crime for which she suffers' but especially for 'attempting to commit a murder upon her own helpless child, for which guilt she now considers the vengeance of God has overtaken her, to which she is patiently resigned, and departs in peace'(p.353). The account also tells of her devoted son, for whom she 'wrote an incoherent petition to the judge, recommending the youth to his protection and mercy'(p.354).

Agnes's execution is portrayed sympathetically: most of the usual 'crowd of spectators' which 'followed her to the fatal spot...returned weeping at the recollection of the fervency with which she prayed'. Religious language such as 'devoutly', 'fervency' 'last hour' and 'launched into eternity'(p.354), is reminiscent of the religious element of many real accounts of felons' deaths, for example Patrick Ogilvie, condemned in 1765 for incest and murder. His account is printed in the *State Trials*, vol.XIX: 'as I have but few hours to live, [I] would chuse to employ them in the way

that would most conduce to my eternal happiness: and though my years be few, and my sins many, yet I hope, through God's grace...that the gates of Heaven will not be shut upon me'(pp.1337-8). He insists, 'I declare my innocence' but comments, 'I freely forgive every person concerned in this melancholy affair'(p.1337), concluding, 'Come, sweet Jesus, come quickly, and receive [my spirit]'(p.1338). However, in Agnes's case, the language suggests sacrifice rather than criminal execution, perhaps implying that she is sacrificed for crimes for which William must bear some responsibility but no punishment.

William is struck by remorse and sends for the petition Agnes wrote. She addresses it to 'Lord Chief Justice Norwynne', befitting their new juridical relationship and begs him to 'spare my life', reminding him, 'you once condescended to take notice of me'(p.355). William 'hoped by his protection of the son, to redress, in some degree, the wrongs he had done the mother'(p.356) but the boy pines to death after his mother's execution and William is denied the opportunity to redeem himself.

Tompkins dismisses the novel as 'a variant on the contrast between primitive virtue and the corruptions of civilization'(p.299). Yet the novel reveals specific concerns regarding the legal system which translated aristocratic male interests into laws which punished according to class and gender, as opposed to guilt. Had the class positions been reversed, William would probably have been hanged for the seduction of Agnes. The novel implies strongly that he should have married Agnes, whom he loved, albeit selfishly, rather than Lady Clementina, with whom he is unhappy and who proves unfaithful. We read, 'In every peevish or heavy hour passed with his wife, he was sure to think of' Agnes and that 'In the chagrin of a barren bed, he sometimes thought, too, even on the child that Agnes bore him'(p.351).

The tragedy rests on William's embodiment of social and legal values, his consequent inability to conceive of marrying a social inferior, and his failure to recognise her virtue as important. This leads to the novel's consistent critique of the legal system, evident both in its thematic concerns, for example seduction and infanticide, and in its language in terms of legal terminology. This critique is so detailed that it demands equally detailed consideration of the law in order to appreciate its accuracy.

Neither the law regarding issues related to virtue nor attitudes towards it changed substantially during the century. Chastity, for example, was viewed by law primarily in terms of property throughout the century and discontent with such laws was expressed in the seventeenth and nineteenth centuries. This discontent is revealed in the public mind by ecclesiastical shame punishments becoming rarer and juries becoming more lenient in cases of infanticide. However, the opinions of the legislative body did not necessarily reflect public attitudes. The law did not begin to change until the nineteenth century and even in the twentieth century an element of thinking remains that sees raping a man's wife partly as an injury to him. The action for loss of services, brought by fathers in cases of rape or breach of marriage promise, both of which would lessen their daughters' hopes of marriage and thus damage their masculine honour and cost them money, was only officially abolished in 1970. Women have been regarded by law as their husbands' property during much of the twentieth century as in the eighteenth, not as chattels but as 'belonging' to their husbands in some ill-defined way. Sheridan's eighteenth-century dictionary defines 'property' not simply as an object but as a 'right of possession'. His definition of 'to possess' is particularly useful: 'To have as an owner, to be master of; to enjoy; to have power over'. It is worth noting that rape within marriage was not declared illegal until 1991 and the legislation met with much opposition because a woman is still deemed to give her body to her husband in the marriage contract.

Views concerning women as somehow belonging to their husbands were more current and acceptable in the eighteenth century but they did meet with opposition. This dialectic is embodied in much of the fiction of the period and is part of an older debate concerning the legal position of women, a debate seen in diverse writers and genres, from Chaucer's outrageous Wife of Bath, later many of Shakespeare's attractive and independent heroines, Milton's polemical essay *Doctrine and Discipline of Divorce* (1643) and even his epic poem *Paradise Lost* (1667). The issue continues to provoke interest and debate in Restoration comedies and early 'feminist' writings such as Aphra

Behn's plays and Astell's polemical essays. Eighteenth-century writers were exploiting an issue which had provoked strong argument for centuries.

The debate did not resolve itself during the eighteenth century. Wollstonecraft argues against the same legal double standard at the end of the century that Astell had exposed at the beginning. Austen and Ferrier write against a backdrop formed by the same attitudes in the nineteenth century. The tragedy of the seduced lower class maiden is a popular narrative motif in the eighteenth century, reflecting real fears and legal problems but it is also present throughout the nineteenth century in fiction such as George Eliot's *Adam Bede* (1859) and *Silas Marner* (1861) and later Hardy's *Tess of the d'Urbervilles* (1891).

The concept of virtue as property and the legal problems it engenders has a long history, one which cannot find resolution easily. Eighteenth-century writers' discussion of the ideal of virtue reflects consideration of it by legal experts such as Blackstone. The law provided a framework for discussion, since it presented officially the national stance on the issue and people shared common knowledge of it. Religious thinking provided an alternative framework for such discussions, since it too influenced many people's attitudes and behaviour and was part of the collective consciousness, alongside but distinct from the law.

Writers who argued that virtue required religious conviction or rationality were by implication challenging the fundamental assumptions of English law and custom, which reduced female morality to part of the property mechanism. There appears to have been consistent tension between the social and legal perception of virtue and the religious and moral view, a tension which is reflected in contemporary writing. Twentieth-century readers are generally aware of the religious context of virtue but must not over-emphasise its importance in the eighteenth-century scheme of things. Only when the largely legal and financial basis of eighteenth-century ideas of virtue is acknowledged can literary presentations of it be understood fully.

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- i J.Mullan, *Sentiment and Sociability: The Language of Feeling in the Eighteenth Century*, Oxford, Clarendon, 1988, p.67.
- ii B.Mandeville, *Remarks* added to *The Fable of the Bees* (1714) in 1723, edited by P.Harth, Harmondsworth: Penguin, 1970, p.212.
- iii Sir W.Blackstone, *Commentaries* (1753), sixth edition, 4 vols, Dublin, 1775, IV,p.64. Further references are to this edition unless otherwise stated.
- iv J.Todd, *Sensibility: An Introduction*, London: Methuen, 1986, p.97.
- v J.M.S.Tompkins, *The Popular Novel In England: 1770-1800*, London: Constable, 1932, pp.138,152-3.
- vi M.McKeon, *The Origins of the English Novel, 1600-1740*, London: Johns Hopkins Press, 1987, pp.157-8.
- vii H.R.Steeves, *Before Jane Austen: The Shaping of The English Novel in The Eighteenth Century*, New York: Holt, Rinehart and Winston, 1965, p.99.
- viii P.Aubin, *The Strange Adventures of the Count de Vinevil* (1721), London: Garland, 1973, p.27.
- ix K.Munzo Rogers, *Feminism in Eighteenth-Century England*, Sussex: The Harvester Press, 1982, pp.116-7,125,117.
- x P.Aubin, *The Life and Adventures of the Lady Lucy* (1726), London: Garland, 1973, p.108.
- xi H.Fielding, *Amelia* (1751), edited by D.Blewett, Harmondsworth: Penguin, 1987, p.45.
- xii Sir W.Blackstone, *Commentaries* (1753), twelfth edition, 1793, edited by E.Christian, I,p.445. Blackstone's *Commentaries* were frequently revised and so it is occasionally useful to use later editions, which contain some detail not in the earlier editions.
- xiii H.Fielding, *Shamela* (1741), edited by D.Brooks-Davies, Oxford: Oxford University Press, 1986, p.330.
- xiv G.Whicher, *The Life and Romances of Mrs Eliza Haywood*, New York: Columbia University Press, 1915, p.66.
- xv B.MacCarthy, *Women Writers: Their Contribution to The English Novel 1621-1744*, Cork University Press, 1944, p.254.
- xvi J.J.Richetti, *Popular Fiction Before Richardson: Narrative Patterns, 1700-1739*, Oxford: Clarendon, 1992, pp.225,227.
- xvii S.Richardson, *Pamela: or, Virtue Rewarded* (1740), edited by P.Sabor, Harmondsworth: Penguin, 1985, pp.172,91.

- xviii Anon., *Lettre Sur Pamela* (1742), London: Garland, 1975, p.31.
- xix Fielding, *Shamela* (1741), p.322.
- xx H.Fielding, *Tom Jones* (1749), edited by R.P.C.Mutter, Harmondsworth: Penguin, 1985, pp.473-4.
- xxi I.Watt, *The Rise of The Novel: Studies in Defoe, Richardson and Fielding*, London: Chatto and Windus, p.173.
- xxii T.Smollett, *Roderick Random* (1748), London: Dent, 1984, p.230.
- xxiii R.F.Brissenden, *Virtue in Distress: Studies in the Novel of Sentiment from Richardson to Sade*, London: Macmillan, 1974, pp.160-1.
- xxiv W.Beatty Warner, *Reading Clarissa: The Struggles of Interpretation*, London: Yale University Press, 1979, p.49.
- xxv T.Eagleton, *The Rape of Clarissa: Writing, Sexuality and Class Struggle in Samuel Richardson*, Oxford, Basil Blackwell, 1982, pp.66-7,58,85.
- xxvi J.P.Zomchick, *Family and The Law in Eighteenth-Century Fiction: The Public Conscience in the Private Domain*, Cambridge: Cambridge University Press, 1993, p.95.
- xxvii S.Richardson, *Clarissa or, The History of a Young Lady* (1747-8), edited by B.A.Wright, 4 vols, London: Dent, 1967, II,p.424. This letter, which Richardson added to the third edition in 1751, is omitted in the Penguin edition, which is based on the first edition. Further references to the Dent edition are indicated by giving a volume number as well as a page number.
- xxviii S.Richardson, *Clarissa or, The History of a Young Lady* (1747-8), edited by A.Ross, London: Penguin, 1985, pp.1287,953. Further references are to this edition unless otherwise indicated.
- xxix M.Wollstonecraft, *Vindication of the Rights of Woman* (1792), edited by M.Brody, London: Penguin, 1988, pp.224-5.
- xxx M.Hearne, *The Female Deserters* (1719), London: Garland, 1973, p.97.
- xxxi Indemnity: 'Security from punishment, exemption from punishment', T.Sheridan, *A General Dictionary of the English Language* (1780), 2 vols, Menston: The Scholar Press, 1967.
- xxxii Blackstone, *Commentaries* (1753), 1793 edition, III,p.142.
- xxxiii Blackstone, *Commentaries* (1753), 1793 edition, III,p.142.
- xxxiv I.Bell, *Literature and Crime in Augustan England*, London: Routledge, 1991, p.101.
- xxxv B.Mandeville, *The Virgin Unmask'd* (1709), New York: Scholars' Facsimiles and Reprints, 1975, p.183.
- xxxvi S.Richardson, *The History of Sir Charles Grandison* (1753-4), edited by Jocelyn Harris, Oxford: Oxford University Press, 1986, IV,p.387.
- xxxvii W.Forsyth, *Novels and Novelists of the Eighteenth Century; in Illustration of the Manners and Morals of the Age*, London: John Murray, 1871, p.105.
- xxxviii See *State Trials*, edited by T.B.Howell, 21 vols, London, 1812-16, XVII,pp.57-71. See also *State Trials* XIX, pp.885-980, pp.1177-1236.
- xxxix H.Fielding, *Joseph Andrews* (1742), edited by D.Brooks-Davies, Oxford: Oxford University Press, 1986, pp.36,52.
- xl Steeves, *Before Jane Austen*, p.83.
- xli Bridewell was a penitentiary, converted from a hospital in Blackfriars but the name became generalised to cover all houses of correction.
- xliv L.Stone, *Road to Divorce: England 1530-1987*, Oxford: Clarendon Press, 1990, p.249.
- xlvi H.Fielding, *The Covent-Garden Journal*, edited by Gerard Edward Jensen, 2 vols, New York: Russell and Russell, 1964, number 68, p.122.
- xlvii A.Parker, 'Tobias Smollett and the Law', *Studies in Philology*, vol.39, University of North Carolina Press, 1942, pp.545-58 (p.545).
- xlviii L.Stone, *The Family, Sex and Marriage in England 1500-1800*, London: Weidenfeld and Nicolson, 1977, p.541.
- xlvi Elizabeth Needham suffered this punishment in 1731. See Stone, *Family, Sex and Marriage*, p.619. See also J.M.Beattie, *Crime and the Courts*, p.464.
- xlvii J.Cleland, *Fanny Hill: Memoirs of A Woman of Pleasure* (1749), second edition, London: Mayflower-Dell, 1964, p.121.
- xlviii M.Hays, *Memoirs of Emma Courtney* (1796), 2 vols, London: Garland, 1974, II,p.108.
- xlix H.W.Hodges, introduction to *Roderick Random*, p.ix.
- l M.Hamilton, *Munster Village* (1778), London: Pandora, 1987, p.115.
- li M.Wollstonecraft, *The Wrongs of Woman: or, Maria* (1798), edited by J.Todd, London: Penguin, 1992, pp.115-6.
- lii D.Spender, *Mothers of the Novel: 100 good women writers before Jane Austen*, London: Pandora, 1986, p.260.
- liii D.Defoe, *Moll Flanders* (1722), edited by D.Blewett, London: Penguin, 1989, p.227.
- liv See J.S.Cockburn, 'Infanticide in Eighteenth Century England' in *Crime in England*, edited by J.S.Cockburn, pp.187-209.

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- iv *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, edited by D.Hay, P.Linebaugh, London, 1975, p.29.
- lvi E.Inchbald, *Nature and Art* (1796), *The British Novelists*, edited by Mrs Barbauld, vol. XXVII, London, 1820, p.263.