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Women's Rights to Property in Late Eighteenth- and Nineteenth-Century
England: Cultural Attitudes

Majetková práva žen v Anglii od poloviny osmnáctého do konce
devatenáctého století: kulturní postoje

BAKALÁŘSKÁ PRÁCE

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Thesis Abstract

The inequality of sexes in England has been a sore point in society for centuries. Since the seventeenth century, with the rise of the genre of the novel, writers touched upon this unevenness of rights. During the eighteenth century, there was an increase in the number of female writers and some of them made the issue of female rights their central theme. But to understand the problem, it is necessary to understand the laws concerning women in England in the eighteenth and nineteenth centuries.

This thesis follows the course of a life of a woman, from before birth until the time after marriage has ended and the rights to property she possessed over the course of her life. It is concerned consecutively with the period before, during and after a marriage, as whatever rights a woman had changed dramatically with the change of her marital status. Since rights to property differed through time, but also through the social layers of the society, there is also a division into social classes.

The focus of this work is the period in between 1753 and 1857, years that mark the two important Acts of Parliament that changed the matrimonial law and with it women's rights. In 1753, it was the *Act for Better Preventing of Clandestine Marriages* that put an end to the widespread clandestine and contract marriages. More than a hundred years later, in 1857, the Parliament approved *An Act to Amend the Law Relating to Divorce and Matrimonial Causes in England*, which legalized divorce, but also was a first step to abolishing marital coverture.

Both fiction and non-fiction are used to show how the rights of women were perceived by writers of the eighteenth and nineteenth centuries. The views were influenced by the sex and the social sphere of the authors, but also the exact period when they wrote. It is shown, how sometimes the difference of a few decades changed the way a legal phenomenon was viewed.

Abstrakt

Nerovnoprávnost pohlaví v Anglii je citlivým tématem již několik století. Již od 17. století, kdy román jako umělecká forma začal nabývat na významu, se spisovatelé zaobírají nerovným přístupem k právům. V průběhu 18. století narostl počet spisovatelek, z nichž některé použily práva žen jako ústřední téma své práce. Ale aby bylo možné pochopit důvod jejich prací, je nutné nejprve znát zákony týkající se žen v 18. a 19. století.

Tato práce sleduje život ženy od narození až po období po skončení manželství a majetková práva, na které měla nárok v průběhu života. Postupně se zabývá obdobími před, v průběhu a po manželství, vzhledem k tomu, že práva ženy se výrazně měnila se změnou rodinného stavu. Protože se práva k majetku vyvíjela v průběhu času, ale byla odlišná i v různých společenských vrstvách společnosti, jsou zde rozvrženy i rozdíly mezi těmito společenskými třídami.

Práce se soustředí se zejména na období mezi lety 1753 a 1857, ve kterých byly vydány dva zákony, které změnily rodinné právo a s ním i práva žen. V roce 1753 to byl Act for Better Preventing of Clandestine Marriages (zákon pro lepší předcházení tajným manželstvím), který zakázal tajná a smluvní manželství. O více než století později, v roce 1857, schválil Parlament An Act to Amend the Law Relating to Divorce and Matrimonial Causes in England (zákon upravující právo vztahující se k rozvodu a věcem manželským v Anglii), který zlegalizoval rozvod, ale také byl prvním krokem ke zrušení stavu, kdy v manželství žena pozbývala vlastní právní identity, která byla pokryta jejím manželem.

V práci je užita beletrie i literatura faktu, které ukazují, jak spisovatelé v průběhu 18. a 19. století vnímali práva žen. Jejich názory jsou ovlivněny nejen pohlavím, ale také tím, z které sociální vrstvy pocházeli, i období, v kterém psali. Ukážeme, jak někdy i několik desetiletí změnilo pohled na fakta z právní praxe.

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1. Introduction

When asked about the rights to property that women had in England until the twentieth century, most people would answer that they probably did not have any. It is true that there were women in the eighteenth- and nineteenth-century England who were never able to legally own any property, especially if through an early marriage they passed from under their father to their new husbands and then died while still married. Yet there were also those who could, at least to a degree, manage large estates by themselves. But the knowledge of what rights women had in the past is now quite limited and often inaccurate.

Most information readers have at present about the eighteenth and nineteenth centuries, comes from reading fiction written in that period. Yet sometimes, without proper knowledge of facts, it is not easy to understand what the author meant when describing the financial situation of their heroines. Such an example can be found in *Pride and Prejudice* (1813) by Jane Austen, where it is obvious that the Bennet sisters cannot inherit their father's property, but to those who are not familiar with the term entail, it is not very clear why and whether that was a standard procedure at the time. Thus it will be the objective of this thesis to show what rights to property women in the eighteenth- and nineteenth- century England actually had and to demonstrate the complexity of women's legal position by examples drawn from both fiction and non-fiction.

Most primary sources in this thesis will be eighteenth- and nineteenth-century novels of different kinds that will help to understand the rights to property during different periods of a life of a woman and how it differed across the social spectrum. Also, the notions of the same phenomena in legal theory were not described by authors in the eighteenth century in the same way as a century later. Non-fiction can offer a more objective and wholesome view on facts of everyday life, however, most essays and pamphlets concerned with social criticism

were usually written with a purpose and therefore they are not always completely reliable. There will be references to case studies of divorce and separation trials, as well, which are an important source of knowledge about marital life and how the rights to property were changing.

This thesis is focused on the period between the years 1753 and 1857. These years represent two Acts of Parliament that changed significantly the customs of marriage, divorce and what rights men had over women. In 1753, Lord Chancellor Hardwicke became the one to reform the English marriage law, setting the principal course of marriage for the next hundred years. He was behind the *Marriage Act*, or *An Act for Better Preventing of Clandestine Marriages*, that abolished all clandestine and contract marriages. The change was initiated already in 1750 by a pamphlet by one of the king's chaplains, the Revd. Henry Gally, where he mentioned all the scandals connected to clandestine marriage and proposed to annul all clandestine marriages, regardless of consequences for the couples. After some failed attempts, Lord Chancellor Hardwicke drafted a bill and managed to pass it through the House of Lords, House of Commons and then again through the House of Lords over the period of six months. In order to push the bill through, Hardwicke had to make several concessions to different interest groups. For example, he got on his side the Scots by omitting them from the bill and the reason why he was supported by the squires was that the bill gave them "a legal veto power over the marriages of their children up to the age of 21."¹ Moreover, he persuaded the clergy that by abolishing clandestine marriages, the people will seek the official marriage in church, which would mean an increase of their official income. According to Stone, it is agreed that "Hardwicke contrived a most ingenious bill which had something in it for almost everybody" and it was "a triumph of cunning draftsmanship."² However, the "Hardwicke's Marriage Act" still had many opponents among the people, the clergy and also among the

¹ Lawrence Stone, *Road to Divorce*, (Oxford: Oxford University Press, 1995) 123

² Stone, *Road to Divorce*, 123

members of the Parliament. It may be interesting to note that the loudest critics were those, who themselves profited from a runaway clandestine marriage with an heiress like Henry Fox, secretary of state for war.³

The *Marriage Act* created quite a lot of controversy, but not as much as the *Divorce and Matrimonial Causes Act* of 1857. The debates over it took more than seven years, since 1850 and in the end the final bill was pushed through by the Prime Minister Lord Palmerson in only three months. Originally it was presented as a possibility to allow members of all classes to obtain a divorce, but it was never intended as such and in the end divorce was still accessible only to rich men with connections. The main objection to the Act, and the reason why it took the Parliament seven years, was a fear of an increase in the number of divorces and also a claim that a law like that would promote immorality. It even raised public protests not only from the Church, but also from different interest groups, including women.⁴ According to Stone, the final Act was “a botched and bungled job, cobbled together over months of wrangling by a dwindling band of weary legislators engaged in debate for up to twelve hours a day” and it was a miracle “that it should have remained for so long the law of the land, largely unaltered for eighty years.”⁵ Indeed, this Divorce and Matrimonial Causes Act was valid until 1937, without any major changes.

The study of anything connected to law is not an easy task, when it comes to England, since the system of the English law was very complicated in the eighteenth and nineteenth centuries. There were three systems working parallel to each other, each with their own jurisdiction and “to enter the eighteenth-century machinery of the law is to penetrate the heart of darkness.”⁶ The three systems, canon, equity and common law, had each their separate

³ Stone, *Road to Divorce*, 122-123

⁴ Stone, *Road to Divorce*, 378-382

⁵ Stone, *Road to Divorce*, 389

⁶ Stone, *Road to Divorce*, 27

courts, judges and specialized lawyers, but all of them took part in decisions about matrimony and consequently the property women were allowed to own.

The canon, or ecclesiastical, courts followed the law of the Church, though most of those who worked there were not ordained. These courts decided about both the making and the breaking of marriage, as well as dividing property of a late husband between his widow and their children. The common law's jurisdiction was property, debts and awarding monetary damages for injury. The common law courts often had to decide on the validity of marriage when there were doubts as to who was responsible for debts of a woman. The equity law of Chancery was created to lessen the strictness of the common law, which ignored many instances of everyday life, like divorce. They also handled trusts, including marriage settlements and trusts for separate property of married women. Equity also took care of alimony and they were guardians of orphans and lunatics when they did not have any other family. There also existed manorial law, which was subordinate to equity. It was specific to regions and it decided the inheritance of copyhold (rented) property by widows and orphans.⁷

All three systems of the law agreed on the same principles, when it came to women and their rights to property. Most men believed that women were not supposed to hold any property, especially during marriage. There were claims, especially in the nineteenth century when more options to earn money opened to women, that separate property of wives threatened the core of the marriage and so it was better for the society to keep them under *coverture*, a state when the legal identity was covered by her husband.

Lawrence Stone speaks from experience when talking about penetrating the heart of darkness of the English legal system of the eighteenth century. He is among the leading social historians that concentrate on family dynamics in between 1500 and 1900 and the laws concerning it. This thesis will make use of three of his publications, most dominantly *Road to*

⁷ Stone, *Road to Divorce*, 25-26

Divorce that maps the changes in the marital law in England. Another source of secondary literature is Amy Louise Erickson and her *Women and Property in Early Modern England* that follows the changes in the possibilities for women to hold property, based on her research in the archives of the ecclesiastical courts in selected parts of England.

The structure of the thesis will follow the course of life of a woman from before birth until after marriage. Not all women went through all of the possible phases described here, since some women never married and other died before their husbands. But the structure of this work is based on the natural chronology, thus making it easier to describe.

2. Maidenhood

Maidenhood can be described as the period in the life of a woman before her marriage. She could have been called a “spinster,” a “virgin” in legal texts or a “wench” in informal speech.¹ Spinster² and wench³ were originally neutral, only becoming negatively marked during the eighteenth century, through so called pejoration. The unmarried woman was a problem for the male population, because according to the common law, she could not exist.⁴ Women were “understood married or to be married”⁵ by authors of both legal texts and fiction. The possibility of not marrying was therefore considered unnatural, hence the shift in connotation of the word denoting a single woman.

For some women this period lasted their whole life. The number fluctuated during the two centuries in question. Erickson claims that around the beginning of the eighteenth century, the number was close to twenty percent of women in the whole society.⁶ Stone, in his *The Family, Sex and Marriage in England 1500-1800* (1990) gives the number to be twenty five percent, but he only considers upper-class women.⁷ Yet most girls married as soon as they found a match, because that was expected of them. Maidens’ rights to property were quite different from those of married women and especially widows.

An unmarried woman had rights to some property in three different areas of life. First of all, she could inherit property from her parents, siblings, relatives or even masters if she

¹ Amy Louise Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1997) 47

² "spinster, n." *OED Online*, June 2013, Oxford University Press, 23 June 2013
<<http://www.oed.com/view/Entry/186771?redirectedFrom=spinster>>

³ "wench, n." *OED Online*, June 2013, Oxford University Press, 23 June 2013
<<http://www.oed.com/view/Entry/227789?rskey=iJeZqz&result=1&isAdvanced=false>>

⁴ Antonia Fraser, *The Weaker Vessel*, (New York: Vintage Books, 1985) 5

⁵ *The Lawes and Resolutions of Woman's Rights, or the Lawes Provision for Women*, (London: The Lawbook Exchange, 1632) 6

⁶ Erickson, 48

⁷ Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, (London: Penguin Books, 1990) 242-243

worked for a living. The possibility to inherit and the kinds of property that constituted the inheritance vary between the different social groups from household goods or farm animals, to mansions and thousands of pounds as an annuity for life.⁸ But the most important property a maid could have was her dowry. Dowry, or a marriage portion, was the money paid to the husband upon marriage and it was also the means to express the value of the girl. Technically, the portion did not belong to the girl herself, but it went from the parents or guardians straight to the husband. Even if she had it in her possession, she could not dispose of it freely, especially in the middle and upper classes, but it was saved and handed over to the husband after marriage. The last area where the maid could own something, were the wages she earned if she was working. This usually only touched the laboring class, where the girls often had to start working very early in their lives.⁹ But it was possible to use the wages to buy or rent some property, which immediately moved the woman up the social ladder.

2.1 Before birth

A child could inherit even before birth, which shows that the succession of property in England did not always discriminate between sexes. William Blackstone tells us:

An infant *in ventre sa mere*, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born.¹⁰

⁸ Erickson, 61-78

⁹ Erickson, 85

¹⁰ William Blackstone, *Commentaries on the Laws of England, Book the First* (Salt Lake City: Gutenberg, 2009) 78

According to Erickson's study of wills made in England, it was not uncommon to give a part of the legacy to a child of a confirmed or only suspected pregnancy, without distinction of the sex of the baby. However, it could only inherit after it was born alive, otherwise its portion went to the next heir in line, which happened also when the child was stillborn.

2.1.1 Rights of illegitimate children

The above mentioned possibility that an unborn child could inherit was not true for every pregnancy. The first condition to have any property rights when any person is born is legitimacy. Based on the contemporary law, an illegitimate child, or a bastard, was "one that is not only begotten, but born, out of lawful matrimony."¹¹ But a child was also considered a bastard when it was born long enough after the death of its mother's husband that it would be impossible that he could be the father. There was also a law that stated that even a child born within a wedlock can be considered a bastard, if the father was out of the country for a period longer than nine months and could prove that he had no access to his wife. Of course, when the husband for an apparent reason, for example his age, could not have any children, the issue of the wife were also bastards. Moreover, there was a different approach to children born after different kinds of a divorce. After a divorce from bed and board the children were considered to be bastards, but not after a separation by agreement, where there could always be presumed access to the wife. The divorce "*a vinculo matrimonii*" makes bastards even out of the children born within the duration of the marriage, because the marriage is rendered null from the beginning.¹²

However, there is a difference in the three systems of the English law about the possibility of changing the illegitimate status: "The civil and canon laws do not allow a child to remain a bastard, if the parents afterwards intermarry."¹³ In other words, if the parents of an

¹¹ Blackstone, 265

¹² Blackstone, 266

¹³ Blackstone, 265

illegitimate child married under civil or canon law, the child became legitimate and could inherit from his father. But since most weddings were done under the common law, the change of status did not appear very often.

The percentage of illegitimate births was not very high in the society around the year 1800, only about 6% as a proportion to all births.¹⁴ The low figure might be caused by the fact, that in the lower classes, couples were often recognized as married through “stable cohabitation, the exchange in conversation of words such as husband or wife, the use of the same surname.”¹⁵ But it still presented a problem that was present in the society, especially in the lower classes. According to Stone, premarital relations were quite common and approved of. Especially a tradition called “bundling” where a man could spend the night with a woman before their marriage, which could happen repeatedly. Although this practice did not result in a pregnancy very often, it still was a possible cause of bastard children.¹⁶

The institute of an illegitimate child appears not only in legal texts but also in novels. In some cases the characters are only accused of being the illegitimate offspring, which later proves to be false and the girl can happily inherit. Ruth Perry, in her book *Novel Relations : The Transformation of Kinship in English Literature and Culture, 1748-1818* (2004) mentions several cases of novels, where the heroine is seemingly without a family, property or a name, but prevails and in the end becomes the heiress. Perry talks, among others, about Charlotte Smith’s *Emmeline* (1788), Mary Hays’ *The Victim of Prejudice* (1799), Mary Robinson’s *The Natural Daughter* (1799), which were quite known and popular in their time and that each feature a young heroine who overcomes all obstacles and gains a family.¹⁷

On the other hand, some characters were illegitimate and there was nothing they could do to change it. One such example can be the character of Jemima from Mary

¹⁴ Stone, *Road to Divorce*, 419

¹⁵ Stone, *Road to Divorce*, 52

¹⁶ Stone, *Road to Divorce*, 61

¹⁷ Ruth Perry, *Novel Relations : The Transformation of Kinship in English Literature and Culture, 1748-1818* (West Nyack: Cambridge University Press, 2004) 39

Wollstonecraft's *Maria or the Wrong of Woman* (1798). She is presented to the reader only as Jemima, because "she had only a claim to a Christian name, which had not procured her any Christian privileges."¹⁸ She is an illegitimate child of a servant couple. After her mother's death, Jemima is only allowed to live in her father's household as a servant, without any claim to her father's property, although she is his oldest child¹⁹. The only means that were left for a bastard child to gain any property were to start working as soon as possible. Through apprenticeship and hard work, like Jemima, a person of illegitimate birth could become his or her own master, but there was no inheritance to help them get started.

Not all fathers had the humanity to take care of the illegitimate child in case of its mother's death. This notion created a plot in stories of young daughters of aristocrats who run away with a wicked man that promised them marriage and then leaves them without any means when they become pregnant. Such a story can be found inserted as a cautionary tale in an epistolary novel *The History of Emily Montague* (1769) by Frances Brooke. The plot of Brooke's work was situated mostly in Canada, which is why it is often called the first Canadian novel. However, this cautionary tale occurs towards the end, in letter CCIII, when all of the main characters came back to England. Cautionary tales were added as sub-plots to novels in order to instruct young women and to add educational value to the books. At the same time, they were often parallel to the main plot and showed the results of disobedience. In this case, the father of the baby is rather rich, but he refuses to acknowledge it.²⁰ Without money or connections it was hard to make the father do anything for the illegitimate child. Seduction tales often appear in novels by women after 1750. They were pushed into the background by becoming only secondary plots to the main stories of the virtuous heroines. In the sentimental novels, fallen women serve to contrast their impurity with the chastity of the heroines, as opposed to how Haywood and Manley used them as the protagonists of their

¹⁸ Mary Wollstonecraft, *Maria*, ed. Janet Todd (London: Penguin books, 1991) 64

¹⁹ Wollstonecraft, *Maria*, 81

²⁰ Frances Brooke, *The History of Emily Montague*, (Seattle: Amazon Kindle Books, 2012) 381 - 390

novels. Yet, Binhammer says “this is not always the case. Even in texts by men, e.g. *Amelia* by Henry Fielding, the relation of the story of Amelia and the seduced Mathews only seem to be complete contrasts. The interaction is complicated. Seduced and married are linked with the narrative layers of the main plot and embedded or interpolated tales not only by way of contrast but through thematic overlaps, structural causalities and sympathetic identifications.”²¹

There was a possible legal step to be taken, but first it was necessary to gather the means to pay for the trial and a woman could not sue by herself. She needed a man to stand in for her in front of the court. The court could order the man to marry the mother of the child, if there was sufficient proof that the couple had a possibility to conceive the child. However, the court order could also be abused by a man that got his mistress pregnant, so that he did not have to take care of them himself. Lawrence Stone in his case-studies *Uncertain Unions and Broken Lives* (1995) documents one case, which was prosecuted under both the common and ecclesiastical law. A married man, James Cash, got his servant and mistress Ellen Greenhalgh pregnant. In order to provide for the baby without a scandal, Cash made her swear that the real father was the local blacksmith Thomas Houghton. Ellen managed to seduce Thomas and arranged it so that Cash would find them together. Ellen and her master then sued Thomas at the Petty Sessions for maintenance, which she won. Later on, the lie was discovered and Ellen not only lost the maintenance for her baby, but was sued herself by Thomas in the Consistory Court for “defamation and bastardy.”²²

2.2 From birth to marriage

²¹ Katherine Binhammer, *Seduction Narrative in Britain, 1747-1800*, (Cambridge: Cambridge University Press, 2009) 75

²² Lawrence Stone, *Uncertain Unions and Broken Lives* (Oxford: Oxford University Press, 1995) 112-115

For most young girls, this period of their life was only a preparation for their future marriage. It also served as a popular topic for novelists who described young women from different social classes in their search for a husband. The upbringing of girls was written about a lot as well, by essayists and theoreticians. In real life, this period was spent differently according to their station in life, either by work, education or idleness. Some were trying to help their family, especially if they were among the older children of the family. The better situated girls were more or less preparing to become good wives by learning how to manage a household either themselves or through their servants. The property rights that women had before their marriage, depended largely on the social standing of their family.

Unmarried women were able to inherit property from different sources, like their parents, godparents, guardians or sometimes even masters, if they became servants.²³ Of course, there was age limitation as to when they could freely dispose of their inheritance, which will be explained later. The possibility of inheritance, especially where there were no male siblings, created the figure of a heiress, which again became an inspiration for novelists who chose their subjects from higher social classes like Samuel Richardson in *Clarissa* (1748), Fanny Burney in both *Evelina* (1778) and *Cecilia* (1782) or Mary Wollstonecraft in *Mary: A Fiction* (1788). The heiress was often the main character of the novel, especially in the eighteenth century, as she was later slowly substituted by a girl from the middle class. The main concern of the character was usually to get married and that to a man of equal wealth and birth, and if possible, to the man she loved. The conflict between marrying for love versus marrying for money was also present in stories of women from other social classes, but characters of heiresses were often pushed towards a marriage to a man they could not love by the people around them. This was a trial of whether the love was pure or not. If the man really loved her, they got happily married in the end, like in Burney's *Cecilia* or the relationship was

²³ Erickson, 85

not working right since the beginning and they could not find happiness, like in Richardson's *Clarissa*.

Otherwise, most girls were given a dowry or a marriage portion. However, this money did not, strictly speaking, belong to the woman. It was given to her by a member of her family or a family friend to improve her chances on the marriage market, but because of marital coverture (see chapter 2. Wives), it usually went straight to her husband²⁴. The problem of dowry, or more often the lack of dowry, can be found in many novels from the environment of land owning families or gentry, for example the works of Jane Austen.

2.2.1 Women from lower classes

Labourers, who were the lowest class of the society, were the poorest and generally did not own any land. If they lived in the country, they could have just a cottage with a garden, usually less than one acre of land.²⁵ In town, they rented a house or a flat, only occasionally buying the property. Their houses consisted most often of three rooms, the parlour with a kitchen, the sleeping space and the larder. The last one might have been only a large cupboard instead of a room.²⁶ The family always had their own moveable goods, which if they were only renting the place, could have been their only riches. And since there were mostly more children in the family, the property could have been divided, but that still meant only a small portion for each child.

A girl born into a family that did not own any property obviously could not inherit anything from her parents, aside from a couple of household items. The only property they had was what they managed to earn or buy by themselves. If they were lucky, it was possible to get gifts or even some inheritance from the masters they served. But that happened more

²⁴ Erickson, 91

²⁵ Erickson, 40

²⁶ Erickson, 44

often to girls who became maidservants in households. Those who became dairymaids or other workhands in agriculture usually had only what they could earn by their two hands.

2.2.1.1 Inheritance

If good and loyal, serving girls had the possibility of being written in the will of their master or a mistress. Erickson claims that from her study of wills in Lincolnshire and Sussex “bequests to servants were made by 12 percent of willmakers, and more often by mistresses than by masters.”²⁷ It was frequently just a small sum and it was usually meant to be a marriage portion for the girl. One such example would be the story of Betty Broom that was published in Samuel Johnson’s *The Idler* in 1758. *The Idler* was a series of 104 essays that appeared weekly in *The Universal Chronicle*. The topics varied as well as the narratorial figures. This particular story was written as a letter to the editor, where the poor girl Betty Broom describes the hardships of a house-maid who can read and write. By going through the different places where Betty served, Johnson satirizes the different attitudes towards servants who are able to read and write, because she is mostly despised and thrown out of the house. In the second part of the narrative, published a few weeks after the first one, Betty says “she [her mistress] died, and left me five hundred pounds; with this fortune I am going to settle in my native parish.”²⁸ Although she was the rare example of a servant becoming an heir to her mistress, she had to suffer for some time the harsh treatment of her mistress.

2.2.1.2 Earning a living

The dowry, or the portion of property these girls from lower-classes brought into marriage, was again only what they were able to earn themselves. If by any chance they had relations of a better social standing, they could sometimes provide for them, in order to improve their status on the marriage market. Sometimes their masters could help out as well, either in the form of a bequest in their wills or giving them money or goods personally, but

²⁷ Erickson, 86

²⁸ Samuel Johnson, “History of Betty Broom Continued,” *The Adventurer and The Idler*, (Salt Lake City: Gutenberg, 2004) 149

those were only unique cases.²⁹ Otherwise, girls from these conditions shared the provision for the setting up of a household with their new husbands, since they had no other source or possibility.

In the eyes of writers, females of this sort could become either romantic or tragic heroines. Daughters of farmers could be expected to either find a rich man, marry him after a few obstacles and live happily ever after, or to fall among the most wretched in the society. The heroines of the first type are only exceptions in the literature of the eighteenth century. However, one of the most known examples is Samuel Richardson's epistolary novel *Pamela; or Virtue Rewarded* (1740). Pamela, a young servant was pursued by her master in the tradition of the eighteenth century narrative about a girl defending her virtue from a highborn villain. This novel utilizes the tradition of seduction narrative with the vile aristocrat as the seducer. Pamela's virtue ultimately conquered the immorality and male sexuality, and in the end the domestic values prevail. Richardson's step to attribute the virtue and domestic values to a fifteen year old servant girl was quite radical, even if it now seems just like another Cinderella-like story. According to this tradition, Pamela is rewarded by being offered a marriage to Mr. B on equal terms.

In most works, they were usually assigned only minor roles as chambermaids or companion of the heroine from a wealthier family and their fates are often analogous to those of the heroines. One of the most interesting is again Jemima from Mary Wollstonecraft's *Maria* (1798), who, as mentioned above, is not only an illegitimate child, but she is also a single girl with nothing to her name. She is certainly not the romantic heroine that wins the heart and property of a rich man, on the other hand she falls to the bottom of society, earning her income by the most despised jobs.

²⁹ Erickson, 85

Jemima represents the prevalent idea in the eighteenth century of a prostitute as a victim of seduction. In the tradition of the seduction narrative, the character of Jemima represents the “Magdalen figure,” the seduced girl whose only possibility was to resort to prostitution. This notion was not reserved solely to literature, but it was also quite common in the society, which resulted for example in the founding of the Magdalen hospital for penitent women in 1758.³⁰ This idea became common only in the second half of the century with the increasingly charitable and polite age of sensibility. Ultimately such notion developed into the prostitute with a good heart like Nancy in Dickens’ *Oliver Twist* (1838). But the character of the fallen woman was always difficult to use by the proper writer. Elizabeth Gaskell has a single mother in novel *Ruth* (1853), where the main character of the same name is considered a fallen woman, but she is a positive character and through attempts to lead a virtuous life, she gained the love and respect from the society she lived in. This created quite a scandal, since it was thought that Gaskell was promoting immorality.

The only way for Jemima to have any property was to take any jobs possible since her childhood. From being a house-servant, Jemima became a beggar and a prostitute. She slowly managed to work her way up again by becoming a kept mistress. Her lover’s death left her with nothing again, because his death was so sudden that he did not leave her anything of his property. She started washing clothes “from one in the morning till eight at night, for eighteen or twenty-pence a day.”³¹

In the end Jemima became a woman of some property by serving as a warden in a mental institution. Though this occupation is hardly respectable, “the wages she received, the greater part of which she hoarded, as her only chance for independence, were much more considerable than she could reckon on obtaining anywhere else.”³² But since the book is not finished and there are only fragments of possible endings, it is hard to say what exactly

³⁰ Binhammer, 41-42

³¹ Wollstonecraft, *Maria*, 89

³² Wollstonecraft, *Maria*, 64

became of Jemima and her belongings. It looks like she became a loyal companion to Maria, so her future income must have been either from Maria herself or from some kind of manual labor.

But what needs to be said is that Jemima did not conform completely to the idea of the penitent prostitute. To become this kind of a character the woman had to change her attitude, repent and forget her material needs. Jemima still wished to earn as much money as possible, which in reality could have been a reason why she would not be admitted into the Magdalen hospital.³³ It is also why she could never achieve the rank she hoped for in life, because she was not penitent enough. But this way, the radical “Jacobin” writer Wollstonecraft used the traditional seduction narrative in the beginning of Jemima’s story but then twists it around in order to criticize the society. At that time, it was expected of a woman to lead pure life without any material cravings, but on the other hand it did not allow women to earn enough money by living chastely.

2.2.1.3 Rich relatives

The only way a low-born girl did not need to work for a living was, if she had relations that held better positions than her family. This step could improve not only her financial situation but also the girl’s status on the marriage market. Through her richer relatives, even a girl of very small means could meet a husband that could provide for them both, especially if the girl’s relations offered at least a small dowry. Such an occurrence is mentioned by Stone in one of the case-studies in the *Uncertain Unions* (1995) where the parents of the girl were suing each other for bigamy. The couple’s oldest daughter, Mary, “when she was only four, she had been adopted by her grandfather the attorney, who brought her up in the country and left her £100 in his will. She was therefore well looked after, and lived and married at a much higher economic level than her mother or father.”³⁴

³³ Binhammer, 42

³⁴ Stone, *Uncertain Unions and Broken Lives*, 255

The theme of a poor relation or friend that the richer family takes in appears quite often in literature of the 18th and 19th centuries. Among others, the character of Fanny Williams, whose story is inserted into the main storyline of *Emily Montague* (1769) by Frances Brooke, or the protagonist of Charlotte Brönte's *Jane Eyre* (1847). Since their stories are almost hundred years apart, there are different reasons why the girls are brought into the family and how they are treated. Since *Emily Montague* is a sentimental novel, Fanny becomes a part of her friend's family because of their mutual love. Social criticism in the sentimental is suppressed for the promotion of compassion, charity and feeling for the vulnerable. Rather than depicting social problems to improve them, the sentimental novel works through displays of individualized, personalized distress. And charitable action in defense is actually displayed as in danger of extinction. On the other hand, *Jane Eyre* is a bildungsroman and the way her aunt and cousins treat her, enables her further development through the novel. The Reed family also stands in direct contrast with Jane's relations that she discovered during the course of the plot, the Riverses, that take her in towards the end and treat her as a part of their family rather than an unwanted guest. It is also interesting to mention that Frances Brooke herself was brought up by her relations in Lincolnshire after the death of her parents.³⁵

Another character that comes to live with her richer relations is Fanny Price, the protagonist of Jane Austen's *Mansfield Park* (1814). Austen's writing carries realistic traits, especially in descriptions of the social context and class of her novels. Since she was writing between the romantic and realistic period, features of both are visible in her work and *Mansfield Park* is no exception. Jane Austen's ability of observation, recording of details around her and her sense of social and class difference helped her to realistically describe the

³⁵ Joanne Shatock, "Frances Brooke," *The Oxford Guide to British Women Writers*, (Oxford: Oxford University Press, 1993) 67

environment of the landed gentry that she was most familiar with. That is why, despite Fanny's low birth, the plot unfolds at Mansfield Park, the seat of the family of Lord Bertram.

The heroine, Fanny Price, came from a numerous family and her parents were unable to provide for all of their children. Fanny's luck turned when she came to live with her mother's sister, lady Bertram and her family. During her stay at the Mansfield Park, Fanny met and then married Edmund Bertram. After their marriage, the couple was ultimately provided for by Edmund's father, Thomas Bertram, who was originally very much opposed to any relationship of this couple: "After settling her at Thornton Lacey with every kind of attention to her comfort, the object of almost every day was to see her."³⁶ This change stemmed from his realization that a good character is preferable to money. The nineteenth century saw a rise of the notion of romantic love and marriage based on mutual understanding rather than the equality of wealth.

Fanny had no rights to any property of the Bertram family and she only lived in their house because they allowed her to. Her own family had nothing to give her either as inheritance or dowry. This basically left her without any chance to marry, because dowry was one of the most important points of interest for a man. But she embodied the female ideal of the eighteenth century, by being "gentle, modest, sweet-tempered and obedient," which enabled her to "perfectly fulfill the standard of behavior expected of women."³⁷ Thus, unlike the other young women in *Mansfield Park*, whose behavior did not confirm to this standard, she could find happiness in marriage.

2.2.2. Women from landowning families

Landowning families, or the landed gentry, were those who originally earned their money by trade so they were able to buy or lease property, so that the following generations

³⁶ Jane Austen, *Mansfield Park*, (Seattle: Amazon Kindle Books, 2012) 496

³⁷ Jane McDonnell, "'A Little Spirit of Independence': Sexual Politics and the Bildungsroman in *Mansfield Park*," *NOVEL: A Forum on Fiction*, Vol. 17, No.3 (Spring 1984) 201

were able to subsist only on collecting the rent from their tenants. They usually held up to fifty acres of land in freehold or copyhold, but that depended on the area they lived in. In areas of arable land in south Cambridgeshire or east Yorkshire, it was necessary to hold more than, for example, in the fenlands of northern Cambridgeshire.³⁸ These families were also able to keep servants, although they often had to perform in more functions at once, like a housekeeper and a cook or a lady's maid and a house maid. This is for example visible in the character of Hill, the servant of the Bennet family in Austen's *Pride and Prejudice* (1813).

This social class is rather broad, because it encompasses both professionals, who had to earn their living, and minor aristocracy, whose income was counted in the rent they received once a year. Clara Reeve described the different layers of the class in her *Plans of Education; with Remarks on the Systems of Other Writers* (1792) as consisting of old families that refused titles, people who hoarded huge fortunes by trade, inferior gentry and those of genteel professions like lawyers, doctors and men of church.³⁹

Eliza Haywood was among the first English writers that made a middle-class girl the protagonist of their novels. She followed the wishes of her readers who were middle-class themselves. The beginning of the eighteenth century saw the rise of the gentry, who became the biggest consumers of novels. According to Dale Spender, the middle class was tired or reading about the aristocracy and slowly began to look for something closer to their experience. Based on the popular demand, Haywood introduced a heroine that was not from an aristocratic family and whose virtue was tested during the course of the book by a new type of a villain that came from a higher social class.⁴⁰ For example, the protagonist of her early novella *The Fatal Secret, or Constancy in Distress* (1724), Anadea, was a daughter of a gentleman that spent all his fortune and her only chance was to marry well. Two years later

³⁸ Erickson, 40

³⁹ Clara Reeve, *Plans of Education; with Remarks on the Systems of Other Writers* (New York: Garland Publishing, 1974) 64-67

⁴⁰ Dale Spender, *Mothers of the Novel*, (London: Pandora Press, 1986) 91

Haywood, in another work, *The Mercenary Lover, or the Unfortunate Heiress* (1726), her two main characters are two heiresses from among the landed gentry. This type of a narrative became increasingly popular and was soon used by many writers, most notably Samuel Richardson.

2.2.2.1. Inheritance

The amount of property that a girl from such a family could inherit depended on several factors. The most important was if she had any brothers. In the course of the eighteenth century, England saw a rise of inheritance through primogeniture. The eldest son became most often the primary heir of both the property and movables. Just a century earlier, the custom, supported by courts, was to divide the inheritance equally between all children of the deceased.⁴¹ Blackstone writes that “the eldest son alone is heir to his ancestor”⁴² but a few pages later he adds that some older customs still survive in the country where “not the eldest son only of the father shall succeed to his inheritance, but all the sons alike”⁴³ This shift towards primogeniture may be explained by the fact that if the inheritance was divided, it led to the division of the land which was slowly being broken into smaller and smaller pieces. The solution often was that the oldest son bought out the portions of the rest of his brothers and sisters.

But with the rules of the primogeniture, the sole heir was the oldest son. If the parents wanted to provide for the rest of their children, they had to remember them in their will, because oral agreements on the provisions of daughters did not have to be upheld by the heir. Erickson cites a case of Sir Ralph Verney, who “in the absence of any clause in his father’s will to encourage him otherwise, did abuse his control of the estate, failing to pay his siblings’

⁴¹ Erickson, 27

⁴² Blackstone, 44

⁴³ Blackstone, 48

legacies and annuities.”⁴⁴ This left Sir Ralph’s six sisters and three younger brothers entirely dependent upon his will, with only a minimum chance of a change.

Apparently, sibling rivalry over inheritance was not uncommon, since the eighteenth century saw a rise of plots based on it. Ruth Perry proves that there was a “shift from lateral to lineal inheritance (from sideways to downward transmission),” which was connected to an “emphasis on the new conjugal unit rather than on established consanguineal ties,” meaning that as of the eighteenth century, the new family formed by marriage was becoming more important, especially when it came to property transfers than blood-relations. This shift of perception of the family “introduced an invisible barrier in relationships between brothers and sisters, setting them against one another as competitors within the consanguineal family rather than bringing them together as allies belonging to one kin group among many.”⁴⁵

For example, it is used as one of the most important plots during the first two volumes of the most iconic epistolary novel by Samuel Richardson, *Clarissa, or, the History of a Young Lady* (1748). Clarissa Harlowe is the youngest daughter in a landowning family that is made heiress by her grandfather’s will. That became a source of much animosity between her and her brother and sister and alienated her from her parents. To put an end to the envy of her family, Clarissa allowed that the property was in the hands of trustees instead of hers, but to get it back from them, they would have to allow it, which she believed would not happen. Otherwise, the only way to get it back into her own hands was to go to court, however, she did not have a man that would be willing to stand in the court for her. Clarissa’s family wanted to marry her to Solmes, who agreed to swap estates with Clarissa’s brother after marriage. She became so desperate that she was willing to give up the inheritance in favour of her older sister. Her family refused this offer, probably out of spite and continued pressuring

⁴⁴ Erickson, 69-70

⁴⁵ Perry, 111

her into marriage. This inheritance, which would have ultimately brought her independence of her family, can be viewed as the primary reason for Clarissa's fate.

This real life occurrence, which was probably rather common among the middle and upper classes, apparently inspired the onset of the plot in Jane Austen's *Sense and Sensibility* (1811). First the Norland Manor is left to "his [Mr. Dashwood's] son and his son's son."⁴⁶ Before his death Mr. Dashwood asks his son, to provide for his step-mother and sisters from the money he will inherit, but without stating the exact sum. John Dashwood then reasons with his wife the amount of money he needs to bestow on his family. During the debate he goes from a thousand pounds for each to "presents of fish and game, and so forth, whenever they are in season."⁴⁷ It needs to be admitted that they inherited a thousand pounds each from the previous owner of Norland and their mother inherited ten thousand pounds from Mr. Dashwood. But since they were only four women by themselves, they had no possibility to add to their fortune by means other than marrying.

Problems with inheritance could also appear when the girl did not have any brothers. Since a large portion of this social class consisted of copyholders, not that many people were able to dispose of their property according to their will. Copyhold could have been leased for life or "for inheritance."⁴⁸ A type of copyhold that developed from simple tenure for life was so called "fee simple." According to Blackstone the "tenant in fee-simple is he that hath lands, tenements, or hereditaments, to hold to him and his heirs, but referring to his own pleasure."⁴⁹ The tenant in fee-simple was allowed to dispose of his property during his lifetime, that means he could sell it according to his will and his heirs would have no claim to

⁴⁶ Jane Austen, *Sense and Sensibility*, (Salt Lake City: Gutenberg, 2008) 2

⁴⁷ Austen, *Sense and Sensibility*, 7

⁴⁸ Alfred Caswall, *A Treatise on Copyholds and Copyhold Enfranchisement* (London: C. and E. Layton, 1841) 6

⁴⁹ Blackstone, 2: 104

it after the holder's death. But if it was not sold, after the tenant's death it went to his heir, because the contracts usually sounded like "to A and his heirs for ever."⁵⁰

This type of contract could amend the rule of primogeniture that was upheld by the common law, because if there were no further specifications written into the contract, the heir could have been both a man and a woman. This meant that a daughter could have been an heir, even if there was another male heir possible. Opposed to it was the common law where the heir was always the eldest son. However, there was also a possibility to entail the property to a specific category of heirs. In other words, the contract to the property could limit the possible future owners of the property right from the moment it was signed. Blackstone considered entail to be a hindrance in the process of inheritance, because he distinguishes the simple and straightforward transfer of property to one's heirs and a transfer that was "clogged with limitations, conditions, or entails" where the result was that "the lands must descend in that chanel, so limited and prescribed, and no other"⁵¹

This situation occurs in one of the most known books by a female write in English literature. In *Pride and Prejudice* (1813) by Jane Austen neither the protagonist, Elizabeth Bennet, nor any of her sisters could inherit the property of their father. Austen wrote that "Mr. Bennet's property consisted almost entirely in an estate of two thousand a year, which, unfortunately for his daughters was entailed in default of heirs male, on a distant relation."⁵² The contract of the Bennet's copyhold apparently stated something like "to A and his male descendants, if there are none than to the male heirs of B." In this case B was a cousin of Mr. Bennet, Mr. Collins, whose son was the heir to the Bennet's manor, Longbourn. Despite Mrs. Bennet's constant exclamations about the unfairness of this arrangement, there was nothing anyone could do about it, since it was the base of the copyhold contract.

⁵⁰ John Hamilton Baker, *An Introduction to English Legal History*, (London: Butterworths LexisNexis, 2002) 300

⁵¹ Blackstone, 1:113

⁵² Jane Austen, *Pride and Prejudice*, (London: Penguin Books, 2003) 29

A woman could also inherit property, most notably money, from relations who were further removed than her parents. In literature, there are often cases of a poor girl from the middle class receiving a bequest of cash from her uncle just in time for her to be able to marry the man she loves. It appears often in the genre of bildungsroman, where it comes as a reward for the heroine's perseverance and goodness of heart. One example of this is *Jane Eyre* (1847) by Charlotte Brönte. After many adventures Jane is told that her uncle, whom she never met, only exchanged letters with, made her his heiress: "Merely to tell you that your uncle, Mr. Eyre of Madeira, is dead; that he has left you all his property, and that you are now rich—merely that—nothing more."⁵³ This allows Jane to come to Mr. Rochester as an equal partner, independent of his income. But this inheritance could not have come earlier in the novel, since the main point is personal growth of the main character. The property came as a reward at a moment when Jane reached independence and the peak of her development.

Overall, girls from middle classes were eligible to inherit the property of their parents, but it was not as simple for them as it was for men. Although the English law preferred linear female heirs to collateral male ones,⁵⁴ in the absence of a will, it was highly improbable that a woman would become an heiress. Of course, in the absence of brothers, the female was the primary heir of both the moveable and immoveable property. A woman could become an heir based on a testament of her parents or other relations. But most often, all three systems of the English law, the common and the ecclesiastical law and equity, were doing their best to prevent females to enter into possession of any property without a man as her guardian.

2.2.2.2 Dowry

Apart from inheritance, the other possibility for a girl from a middle-class family to obtain any property was if she was appointed a marriage portion, or dowry. The amount of dowry was often the decisive factor for an intended marriage. It is possible to see just how

⁵³ Charlotte Brönte, *Jane Eyre*, (London: Penguin Books, 1994) 377

⁵⁴ Erickson, 63

important dowry was from contemporary sources. In the diary of Walter Calverley, it is possible to read his relation of his courtship and subsequent marriage. His central concern when negotiating his marriage to Lady Blackett was the amount of money she was going to get and the possible interests in case the marriage portion was not paid in time.⁵⁵

It was possible to receive the marriage portion from several sources and in more than one way. Most often the money was paid by the parents of the woman upon the marriage. But it was also possible that a different family member, or even a family friend could offer to pay the portion instead of the parents, or he could add to the amount. Lawrence Stone mentions in one of his case-studies such an occurrence, when, to improve the chances of Frances Townshend, whose family thought her to be “penniless and ugly, and if left a spinster was likely to become a burden to the family,”⁵⁶ her uncle “the Revd Baldock declared his intention to give his niece £200 as a marriage portion.”⁵⁷ In the end he backed out of the transaction when Fanny’s husband started claiming that the marriage was not legally binding since it was clandestine.

The same situation occurs in *Maria* (1798) by Mary Wollstonecraft. The protagonist of the novel, Maria, was married off to George Venables, but only because Maria’s uncle “promised him five thousand pounds”⁵⁸ as a dowry for Maria. Since Mr. Venables represents the oppressive force that matrimony gives to men, his only reason for marrying the heroine was the large amount of money. Maria’s own father was unable to provide anything for her, because he had fallen into debt. More importantly, Maria’s uncle preferred her to the rest of her siblings and wished her to be married well, which was his sole reason for providing the portion for her.

⁵⁵ Ralph Houlbrooke, ed., “Walter Calverley’s Marriage, 1706-1707,” *English Family Life, 1576-1716*, (London: Basil Blackwell, 1989) 43-46

⁵⁶ Stone, *Uncertain Unions and Broken Lives*, 156

⁵⁷ Stone, *Uncertain Unions and Broken Lives*, 158

⁵⁸ Wollstonecraft, *Maria*, 104

For the girls from a middle-class family, the dowry was often the most important point of negotiations between her family and the family of her husband-to-be. There are cases which survived in legal and private documents that can serve as a proof that the marriage negotiations sometimes failed exactly because the marriage portion was not high enough. The question of dowry was actually one of the arguments that John Echard used in court when he was sued by the family of Frances Townshend for the restitution of conjugal rights. He claimed that she was too ugly and her dowry was too small for him to seriously consider marrying Fanny.⁵⁹

In literature, mentions of the amount of dowry can be found in all novels, where there is a young unmarried girl. Very often the value of the girl was measured by the money she got upon her marriage, regardless of her other qualities. The only other possible recommendation was her beauty, when the couple first met, or her personality, if they were allowed to meet more frequently. Such was the case of Emily Montague, from the novel by Frances Brooke of the same name. The fact that Emily did not have enough money as a dowry is the only reason why her marriage with Edward Rivers was postponed for so long. Since Edward does not have a big income either, Emily did not want to become his burden by not bringing enough into the marriage: “it is not in his power to marry without fortune, and mine is a trifle.”⁶⁰ After refusing her former fiancé Sir George Clayton, she was considered to have no chance to find another man willing to marry her, simply because her dowry was too small. However, the tested and tried lovers, Edward and Emily, were rewarded for their pure love by Emily’s father that appeared as a *deus ex machina* right before the end and gave them the money that allowed them to live comfortably together.

The most known cases are the novels of Jane Austen, where most of her female characters have their lives complicated because their marriage portion is too small and they

⁵⁹ Stone, *Uncertain Unions and Broken Lives*, 155-166

⁶⁰ Burney, 149

have no chance of inheriting anything in the future. Since Austen herself was in the same position as her heroines, being one of eight children of a country clergyman,⁶¹ it stands to reason that this theme keeps repeating in her novels. Characters like Eliza and Jane Bennet or Marianne and Elinor Dashwood are courted by men who deject them because they cannot bring enough money into the marriage. Unlike Austen herself, her characters then find the right person who is willing to marry them and disregard their material standing.

2.2.3 Women from the upper classes

The upper classes were usually the aristocracy or free-hold landowners, who held more than fifty acres of land.⁶² They often came from old families, whose members knew their ancestors all the way to William the Conqueror. The “nouveau rich,” merchants who earned enough to be able to buy big property were also considered a part of this class. However, the aristocracy never fully accepted them and thought them rather inferior. These families could afford to keep more servants with specialized functions, which often required special skills. These servants could have been also recruited from the lower levels of the middle-class, for example a secretary to the gentleman.

2.2.3.1 Inheritance

A girl from an upper-class family had only a little chance of inheriting anything that she would have a complete right to. While her father was alive the girl was under his power and he could make decisions for her in all aspects of her life. A young woman’s property belonged to her father by law and he could dispose of it in any way he thought fit. Fraser writes that “as an unmarried woman her rights were swallowed up in her father’s” and when her marriage was concluded she “passed from the guardianship of her father to her husband.”⁶³ This, of course, could be said about a middle class family as well, but with more

⁶¹ Shattock, “Jane Austen,” 14

⁶² Erickson, 40

⁶³ Fraser, 5

property, it became more visible. Moreover, if the girl had any brothers, the only inheritance she could expect was her marriage portion.

With an only child, the situation was different. Whether the girl was born as the parent's only child or her other sibling died during the course of her maidenhood was not important. If she became an heiress before her marriage, her possible matches quickly shifted. At the same time, such a woman became the target of fortune hunters, usually regardless of her age, looks or disposition and her parents became more picky about who they might allow her to marry, usually looking for as advantageous a marriage as possible. Before the *Marriage Act* of 1753, it was not unusual that an heiress was persuaded either by sweet words or by force to marry clandestinely against the will of her parents by a gold-digger.⁶⁴ After 1753, there was still the possibility to run away to Scotland, where the clandestine marriage was still legal, because Scots were omitted from this Act by Lord Chancellor Hardwicke, which was one of the concessions he had to make to be able to pass the original bill (see 3.2.1 Clandestine marriage). However, that was more complicated and the longer journey gave a chance to the bride's family to intercept the runaways.

The heiress was usually married off as soon as possible. Her parents wanted her to make an advantageous match with a man of the same rank and, if possible, of even a greater fortune or a higher title than she held. If she decided to marry beneath her, her parents could refuse to give her her share of inheritance or disinherit her altogether. Stone mentions one case, where an heiress, Elizabeth Moseley, was courted for a year by the lawyer Arthur Collier. Elizabeth was 36, a rather advanced age to hope for a marriage and she met Arthur while accompanying her old and sick parents to Bath. In the end Elizabeth refused to marry Arthur because if she chose a man her father would not approve of, she would not get the five thousand pounds which she was promised upon his death, but which were still not yet legally

⁶⁴ Stone, *Road to Divorce*, 99

settled on her. When Elizabeth's parents found out about Arthur, they forbade her to meet him ever again. Elizabeth chose the money over Arthur which effectively ended their relationship.⁶⁵

Most young girls were meek and obedient, which was given by their education. This forced obedience, also the main concern of Mary Wollstonecraft's treatise *A Vindication of the Rights of Woman* (1792), was what was expected of all young women of higher birth. They were supposed to follow the decision of their parents, namely their fathers, in all aspects of their lives, especially when it came to the man their parents chose them as husbands. Such an advantageous match, along with an acceptance from the girl is described in another book by Wollstonecraft, her first novel *Mary: A Fiction* (1788). Her father simply "informed her that they had both determined to marry her to Charles, his friend's son; he added, the ceremony was to be performed directly."⁶⁶ Without a word of protest, Mary marries the man chosen for her by her father, to unite their respective estates and improve the financial status of both families. Such arranged marriages were always common in aristocratic and royal circles. According to social historians of the family, this established practice started to be viewed as unfair only during the eighteenth century. Already in the beginning of this century, Mary Astell in *Some Reflections Upon Marriage, Occasioned by the Duke and Dutchess of Mazarine's Case; Which is Also Considered* (1700) claimed that marriage should not be based on monetary interests, since that only caused unhappiness. Astell thought that marriages were supposed to be based upon friendship and agreeable humours. She condemned relationships based on anything but that, including love and following the parental choice of a spouse.

If the girl's parents died while she was still underage, she had to have a legal guardian. This guardian was either the possible next-of-kin male that was chosen by law, or he could have been appointed by the girl's parents. The duties of a guardian were similar to those of a

⁶⁵ Stone, *Uncertain Unions and Broken Lives*, 88-97

⁶⁶ Mary Wollstonecraft, *Mary: A Fiction*, ed. Janet Todd (London: Penguin books, 1991) 14

parent. They were supposed to maintain, protect and educate their wards just like a parent would do.⁶⁷ Based on the Roman law, there were two kinds of guardians with different responsibilities that the English law also distinguished “according to the language of the court of chancery, the *tutor* was the committee of the person, the *curator* the committee of the estate”⁶⁸ At the same time, Blackstone adds that these two terms often merge in the understanding of the law, so that there are not two separate persons named as guardians, but only one fulfilling both functions.

Of the two kinds of guardians that are distinguished by the way they are appointed, the first was called “guardian *by common law*” according to Blackstone “these take place only when the minor is entitled to some estate in lands, and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend”⁶⁹ Such is the case in Cecilia, the heroine of Frances Burney’s three volume novel *Cecilia, or Memoirs of an Heiress* (1782) whose first guardian is her uncle the Dean. Maternal uncles were often the ones that became guardians by common law, because they were not eligible to inherit anything in case of their ward’s death.

The other kind of guardians were called “*testamentary* guardians” since they were appointed in the last will of the parent or previous guardian of the young woman. Blackstone defines that a father “may by deed or will dispose of the custody of his child, either born or unborn, to any person, except a popish recusant, either in possession or reversion, till such child attains the age of one and twenty years.”⁷⁰ The only difference between the two types was the way they were appointed, otherwise they had the same rights and duties towards their wards. This type of a guardian also appears in Burney’s *Cecilia*. After the death of her uncle, Cecilia, “for the short period of her minority, the management of her fortune and the care of

⁶⁷ Blackstone, 263

⁶⁸ Blackstone, 269

⁶⁹ Blackstone, 269

⁷⁰ Blackstone, 270

her person, had by the Dean been entrusted to three guardians, among whom her own choice was to settle her residence.”⁷¹ These three guardians, although originally named as equals fulfilled different functions. The only one who can touch Cecilia’s property was Mr. Briggs who “had the management of her fortune entirely to himself, her other guardians never interfering in the executive part of her affairs,”⁷² which distinguished him as Cecilia’s curator, whereas Mr. Harrel with whom she lived could be considered her tutor, but it is entirely up to Cecilia herself to choose which one of the three men was to be her tutor. The problem with her curator appeared when Cecilia asked Mr. Briggs for money. Although the property was hers by law, since she was a minor, it was entirely up to her guardian whether he would give her anything beside her regular pocket money. This approach was visible when Mr. Briggs refused to give Cecilia any money, claiming she would only spend it on foolish things and there was nothing she could do about it.⁷³

Guardians were quite a common feature in the literature of the eighteenth and nineteenth century. The unprotected orphan, at the mercy of her guardian, appeared rather regularly. For example in *A Description of Millenium Hall and the Country Adjacent* (1762) by Sarah Scott, which represents the all-female utopia of the bluestockings, an orphaned girl under the protection of relatives appears on more occasions. Writers of gothic novels also quite liked this topic, like Charlotte Turner Smith who used it in her *Emmeline, the Orphan of the Castle* (1788). The relationship between a ward and a guardian was often central in novels of sensibility or novels of passion, for example *The Simple Story* (1791) by Elizabeth Inchbald. Importantly, being an orphan can be a background for the main character in a bildungsroman, like Charlotte Brönte’s *Jane Eyre* (1847), since it shows her being disadvantaged from early on in life.

⁷¹ Frances Burney, *Cecilia or Memoirs of an Heiress, vol. I*, (Salt Lake City: Gutenberg, 2002) 13-14

⁷² Burney, 181

⁷³ Burney, 124

In the fiction of the eighteenth and nineteenth century, there appeared two types of guardians. The first were widows that took care of the young heroines that will be further discussed in the chapter dedicated to widowhood. Then there were also guardians representing a father-figure that the heroine can fall in love with in a non-platonic way. This type of Electra-complex narrative evolved over the eighteenth century. One of the stories in *New Atalantis* (1709) by Delariviere Manley revolved around Charlot, a young orphan in the care of the Duke that seduced her and deserted. It is rather explicitly incestuous, since she was brought up with his own children, though slightly older than they were, and she called him her “dear papa.” As the reason why she so easily complied with the Duke’s sexual advances were given by the education he gave her, this story very strongly implies the abuse of power he had over her as a guardian, which can be perceived as destructive to the ward. In the beginning, the Duke gave Charlot an education full of virtue and innocence, but after seeing her as Diana (Goddess of Virtue) in a play, he became enamored on her. He provided her with erotic literature instead of the religious books he had given her previously. Charlot came to believe in her own sexual powers and her power over the Duke and she let him seduce her. But unable to keep his interest, she was abandoned and had to spend the rest of her life in seclusion. It seems that Manley implied that when men have the power to decide female education, virtue is a social necessity. That contrasts with novels that make their female character in the mold of paragons of virtue, like in Richardson’s *Clarissa*.

Almost ninety years later, Elizabeth Inchbald made Dorriforth, a catholic priest, the male counterpart of her heroine Miss Milner in *The Simple Story* (1791). Dorriforth was a catholic priest, thus embodying the unreachable father-figure and educator that differed radically from the earlier version of a guardian. Being a priest is connected with sensibility and femininity of actions. He did not abuse his power over Miss Milner while she was his ward. The problem came with the shift in their relationship, when he became not her guardian

but her future husband, after becoming Lord Elmwood and getting engaged to Miss Milner, which radically changed the dynamics of their relationship. However, the reason he fell in love with her in the first place, was her total abjection and “those moments during which Miss Milner is awed by his power, and which usually occur following some act of defiance and/or disobedience on her part,”⁷⁴ which shows that he expected the proper respect from her, both from the position of her guardian and a priest.

There was always a possibility for the daughter to be disinherited by her father, if he thought her behavior was not proper enough. There had to be a good reason, but often it involved the girl eloping with a man and getting married without the approval of her parents. Such is the case in the cautionary tale of seduction inserted into *The History of Emily Montague*, where the seduced Sophia, after running away with her lover was disinherited by her father who “cast her from his heart and fortune for ever, and settled his estate on a nephew”⁷⁵ This step was always irreversible and extremely severe towards the girl, who was used to the luxury of living with her parents. If such a woman was deserted by her lover, she was left alone in the world without any means to earn her living. The sexual double standard ensured that moral shortcomings were always disastrous for such a woman, whereas the worst outcome of sexual escapades for a man was usually only to be frowned upon.

2.2.3.2 Marriage Portion

Dowry was just as important for a woman from the upper class as for those of less property, maybe even more so. The dowry determined whether and how well the girl married. But just before the period discussed in this thesis, by the end of the seventeenth century there was a “massive inflation in the amount of bridal dowry required at aristocratic level” and this fact “probably limited the number of wealthy women whose families could afford to marry

⁷⁴ Candace Ward, "Inordinate Desire: Schooling The Senses In Elizabeth Inchbald's A Simple Story." *Studies In The Novel* 31.1 (1999), 1 June 2014, 2014 <<http://eds.a.ebscohost.com/eds/detail?sid=3fe6bc22-e912-4c01-b2e1f4d0890ee473%40sessionmgr4001&vid=1&hid=4113&bdata=Jmxhbm9Y3Mmc2l0ZT1lZHMtbG12ZQ%3d%3d#db=a9h&AN=1721414>>

⁷⁵ Brooke, 386

them.”⁷⁶ This occurrence caused that in more numerous families, not all daughters were able to get married, because they had a hard time attracting a husband if they did not have enough money to bring into the marriage.

The amount of money a young woman from a wealthy family got depended on more factors. Of course, “the number of children affected the size of their portion,” also whether her portion was paid by her father straight to the husband, left to her in the father’s will, or if it was up to the girl’s brother to pay it “out of the profits of land he inherited, whose value was not included in his father’s inventory.”⁷⁷ The previously mentioned inflation of marriage portion at aristocratic level is explained by Erickson by the rise of freehold prices, because on this level of society, the portion was usually used to buy property to raise the income of the newlyweds.⁷⁸ The nominal amount was usually counted in thousands, Erickson claims that by the end of the seventeenth century it was at least £5000⁷⁹ but it was apparently rising steeply.

Even if the marriage portion was promised to the daughter, it was not necessarily given to her or paid. If she chose to marry beneath her or the parents did not approve her choice, they could refuse to give her any money. Stone records the case of Lady Bridget Osborne, who was left a marriage portion by her grandfather, the 1st Duke of Leeds, but one of the conditions was that Bridget’s mother would have to approve of her choice. After her marriage to their domestic chaplain William Williams, her family refused to pay the dowry and took her away. Williams had to launch a lawsuit for restitution of conjugal rights which he ultimately won and the couple presumably obtained Lady Bridget’s portion, but only after the order of the court.⁸⁰

⁷⁶ Erickson, 84

⁷⁷ Erickson, 88

⁷⁸ Erickson, 121

⁷⁹ Erickson, 88

⁸⁰ Stone, *Uncertain Unions and Broken Lives*, 195-222

3. Wives

When a woman became a wife for the first time, her legal and social status radically changed. Ruth Perry compares young women who arrived at the age of marrying to “newly fledged birds forced from their nests” and claims that they “had no place in their families of origin but had to seek new homes elsewhere.”¹ The new homes that the girls found became the turning point of their lives. Not only were they dependent on their husbands financially, but their social rank was following that of the man. Samuel Richardson sums the way the difference of rank between the spouses was solved through the words of Mr. B in *Pamela* (1740): “man ennobles the woman he takes, be she who she will,” but it does not work the same the other way around: “but a woman, though ever so nobly born, debases herself by a mean marriage, and descends from her own rank to his she stoops to.”² Yet, Lady Mary Wortley Montagu as the daughter of a peer (Earl of Kingston and later Marquis of Dorchester and the first Duke of Kingston) was allowed to keep her title of Lady even after marriage, by the result of an elopement, to the untitled Edward Montagu (future ambassador extraordinary to Turkey).

But the most important change that happened to the woman was that legally she ceased to exist. Blackstone’s understanding was that in the common law “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband.”³ Such a state was called *coverture* and the woman was called a *feme-covert*. This meant that she could not represent herself in front of a court, sign contracts, make a will or own property without the consent of her husband.

¹ Perry, 62

² Samuel Richardson, *Pamela; or, Virtue Rewarded*, (Salt Lake City: Gutenberg, 2009) 282

³ Blackstone, 1: 257

3.1 Marriage settlements

Most marriages were preceded by a period of courtship, although its length differed for each couple. The most important questions that were discussed during this period were often not matters of love, but of money. The families and friends of the future spouses had to agree on their marriage settlement, which usually influenced the future of the woman and her children more than that of the man. The negotiations on the financial conditions of the marriage were often led by the families or friends of the couple instead of themselves, according to Stone, “the father of the bride decided upon the size of the marriage portion, and the father of the groom upon the appropriate current maintenance for the couple, as well as the jointure for the bride if she outlived the groom.”⁴ The marriage portion was debated in the previous chapter, however during the marriage it was officially the property of the husband and the woman had no way of obtaining anything from it without the permission of her spouse. But whether the future bride obtained any separate property, jointure, or pin-money depended on the settlement which was agreed on by both families.

There were two kinds of marriage settlements, strict settlement and “the trust for a married woman’s ‘sole and separate estate.’”⁵ The strict settlement involved principally the father of the prospective husband and it was possible to do it completely without the participation of the family of the bride. The strict settlement consisted primarily of an entail, meaning that the estate was settled on the eldest male child of the couple. As mentioned earlier, entail could also have been written into the copyhold contract and not connected to a specific wedding at all, but it was always a way for the father of the groom to ensure that the property stayed in the male line of his family. This is mentioned for example in *Pride and Prejudice* (1813) by Jane Austen and, as discussed earlier, it was the reason why the Bennet

⁴ Stone, *Road to Divorce*, 60

⁵ Erickson, 103

estate was inherited by Mr. Collins who was their closest male heir. But the fact that this type of settlement was put together primarily by the family of the groom also meant, that any mentions of property of the bride, like jointure or pin-money, were either missing completely, or were mentioned only briefly in the agreement.⁶

The second type of settlement, the “separate estate” was usually drawn up just before the marriage. Because of the marital coverture, “a woman contemplating marriage could only establish her own trust before she married, but one could be made for her by someone else at any time.”⁷ This settlement gave the woman the right to a property that was only her own and her husband could get to it only with her approval. However, the problem was that this settlement was only allowed in equity⁸, so if the husband sued for the property under common or ecclesiastical law, the court would probably allow the property to be his. This type of settlement can be found for example in Amelia Opie’s *A Wife’s Duty* (1843), where the main character, in order to relieve her husband’s debts decides to draw on her trustees for money from her marriage settlement: “money was wanted to pay debts. There was therefore no alternative, but for me to prevail on my trustees to give up some of my marriage settlement.”⁹

Along with these two settlements, the other three financial matters that had to be dealt with before marriage, although usually in the middle class and above, were marriage portion, jointure and pin-money. There was a direct correlation in between the portion that the woman brought into the marriage and what was given to her as a jointure in case she survived her husband, the exact amount of which was stated in the settlement. The other separate source of income the woman could have while under coverture was pin-money, if the husband agreed to pay it, usually in the form of annuity.

⁶ Erickson, 102-103

⁷ Erickson, 103

⁸ Erickson, 103

⁹ Amelia Alderson Opie, “A Wife’s Duty” *The Works of Mrs. Amelia Opie, Complete in Three Volumes, vol. 3* (Philadelphia: James Crissy, 1843) 235

The discussions in between the two families could take just weeks but also years to conclude. In the excerpt from the diary of Mr. Walter Calverley, we can find details of how these negotiations were done. The drawing of the settlement for his wedding lasted over three months, the main concerns being the amount of the portion of his future wife and when it would be “due and payable”¹⁰ He mentions numerous people involved in the negotiations, including several lawyers and trustees for the wife. In this case, the parents were apparently already deceased on both sides, otherwise they and their friends would probably play an important part in the negotiation.

The fact that the monetary concern was quite probably one of the first things on the minds of everyone around the couple, and most often theirs as well, is illustrated by Catherine Gore in her novel *Pin Money* (1831). Catherine Gore represented the “silver-fork” school and her “novels of the 1830s present a revealing picture of social mobility and the pressures of life among the upper middle classes.”¹¹ The very first chapter of this novel is concerned with the aunt of the future bride advising the girl’s mother on the necessary financial arrangements that need to be settled before the wedding, including pin-money and jointure: “Well then – yourself; what provision shall you require for your daughter? I am speaking of her jointure – her pin money.”¹² However, the settlement was the concern of the aunt, who was a very practical and almost masculine woman dabbling in the business of men. Frederica, the bride-to-be and her mother were not inclined to think about money and she refused to let her future husband know that she even considered the settlements: “make what arrangements for me you think best; only pray do not let Rawleigh suppose I have any mercenary views in my marriage.”¹³ As was said above, any thought of money on the woman’s side before the wedding and often even after was thought unromantic and not becoming a woman. But this

¹⁰ Houlbrooke, 44

¹¹ Shattock, 184

¹² Catherine Gore, *Pin Money* (London: Henry Colburn and Richard Bentley, 1831) 5

¹³ Gore, 22

was given by the construction of gender in the nineteenth century. Monetary matters were the concern of men, so the future groom was supposed to take interest in the proceedings, although they were often conducted by a more experienced man, like his father or a family friend. But since it was expected that after the marriage he would be to one to take care of the family finances, it was only proper that he would be present. Women were on the other hand considered too silly and careless to have a say.

3.2 Types of Marriage

Until 1753, the English law recognized three different kinds of marriage, each with different rights and duties for the spouses. It differed by where the ceremony was administered, by whom, the number of witnesses and whether the correct words were said by both the official and the couple. The official marriage ceremony, according to the church “involved putting up banns three times or obtaining a licence, followed by a marriage ceremony which was conducted in church before the communion table by a beneficed clergyman, in the parish of residence of the bride and within canonical hours.”¹⁴ If any one of these were not done correctly, the marriage could have been pronounced illegal by the court in case there were any doubts by the spouses. After the *Marriage Act* of 1753, the only possible type of wedding ceremony was the public one, since the other two were made illegal.

3.2.1 Clandestine Marriage

According to Stone, until 1753, “a clandestine marriage was a legally binding marriage, but one conducted in a manner which broke canon law.”¹⁵ A clandestine marriage was usually performed by someone, who at least claimed to be a clergyman and “it followed

¹⁴ Stone, *Road to Divorce*, 96

¹⁵ Stone, *Road to Divorce*, 96

the ritual prescribed by the Book of Common Prayer,”¹⁶ Which is why it was legal and binding. But the reason, why it was popular with the people and on the other hand hated by the clergy and the upper classes, was that it was done in secret. There was no reading of banns or getting a valid license, which made it possible for those who wanted their marriage to be kept absolutely secret or acted in the spur of the moment to go through the ceremony without any preparation. It could also take place anywhere but in church, even in a brothel. It was usually administered outside the canonical hours between 8 am and 12 pm and only rarely recorded in the parish register or the private register of the clergyman.¹⁷

The need for the *Marriage Act* drafted by Lord Chancellor Hardwicke stemmed not only from the number of scandals surrounding this type of marriage, but also from the number of couples who used this ceremony. The problem was that the clandestine marriage not only meant legal insecurity for the couple, but also that the church, and consequently the state, was losing money on fees, which amounted to approximately £4,000 - £5,000 a year.¹⁸ In *Road to*

Divorce, Lawrence Stone estimates the number of couples married clandestinely to be 8,000 a year just in London in the 1740s, which is about 17 per cent of all marriages in England, meaning that on average 15 to 20 per cent of marriages were clandestine.

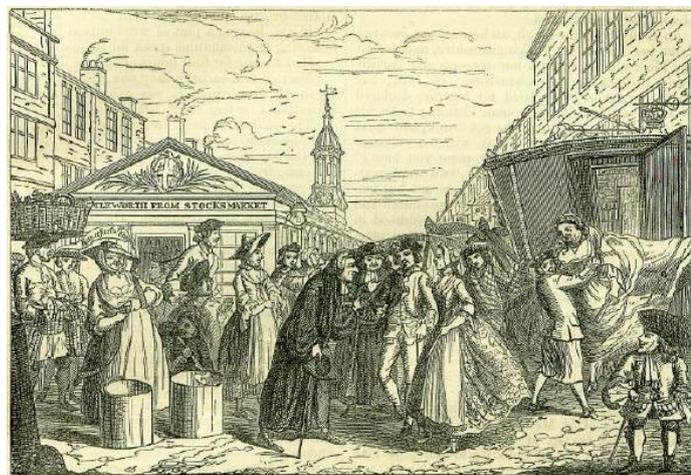


Fig. 1: Caricature of a Fleet marriage (source: <http://www.thebookofdays.com/months/july/24.htm>)

By authors of fiction, clandestine marriage is treated as a matter-of-fact before 1753, which possibly indicates just how widespread it was before its abolition. It is explicitly

¹⁶ Stone, *Road to Divorce*, 96

¹⁷ Stone, *Road to Divorce*, 96-97

¹⁸ Stone, *Road to Divorce*, 109

described in Daniel Defoe's novel *Moll Flanders* (1722). Defoe, who was a journalist and a political activist, describes in this novel various levels of society and also some of the customs of the time. One of the weddings of the main character, Moll Flanders, happens in an inn during the night. The clergyman is brought to the inn and he agrees to marry the couple based on a purchased marriage license, because selling blank or partially filled licenses was at that time a thriving business¹⁹ and then performs the ceremony according to the Common Prayer Book. When asked about performing the ceremony in an inn and at night, he answers:

if you will have it be in the church, you shall; but I assure you your marriage will be as firm here as in the church; we are not tied by the canons to marry nowhere but in the church; and if you will have it in the church, it will be as public as a county fair; and as for the time of day, it does not at all weigh in this case.²⁰

Since this episode was meant to take place around the year 1650, the clergyman's proceedings were indeed still considered legal and binding even in a court of law.

This type of marriage could also serve as a plot twist in drama, for example by William Congreve, who wrote during the Restoration period. His plays belong to the comedies of manners, the plot of which is "usually concerned with an illicit love affair or similarly scandalous matter"²¹ In *Love for Love* (1695) there is a number of potential couples and love affairs. Two of the characters end up being married in disguise, without knowing the real identity of one another. They both intend to marry someone else, but they are tricked by Jeremy, the servant: "Tattle: Suddenly – before we knew where we were – that villain Jeremy, by the help of disguises, tricked us into one another."²² Although they did not know

¹⁹ Stone, *Road to Divorce*, 103

²⁰ Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders* (Seattle: Amazon Kindle Books, 1995) 124

²¹ "Comedy of Manners," 2014, 9.2.2014 <<http://www.britannica.com/EBchecked/topic/362554/comedy-of-manners>>

²² William Congreve, *Love for Love*, (Salt Lake City: Gutenberg, 1998)

the identity of their partners, the marriage is still considered valid. However, there is a strong possibility that if brought to court, it would result in dissolution of marriage and a penalty for the clergyman who performed the ceremony.

Congreve is not the only playwright that used the theme of clandestine marriage. George Colman and David Garrick used the very term clandestine marriage as a title of their play, which was first performed in 1766, thirteen years after the *Marriage Act*. Not only was the widespread clandestine marriage still fresh on the minds of the people, but there was also one important exception to the Act, which allowed this type of marriage to still survive as a possibility for young couples.

As said above, Lord Chancellor Hardwicke, in order to pass his *Marriage Act*, exempted Scotland from it. That meant it was still possible to go across the border to get married without parental consent. Elopement to Scotland is present in many English novels written after 1753. Even in *Pride and Prejudice* (1813) by Jane Austen, Lydia, the youngest of the Bennet sisters created a scandal by running off to Scotland: “Lydia’s short letter to Mrs. F. gave them to understand that they were going to Gretna Green.”²³ The mention of this specific place was not that uncommon either, since it was the most frequent destination of these runaway marriages, where a lot of English couples were married, the highest number being 731 couples in 1854.²⁴ Stone further states that “in addition to catering for poor people from the local area, Gretna Green was also the resort of some members of the rich and titled from the south who wanted a quiet and secret marriage,”²⁵ and also that “for a while, flight to Gretna Green became quite fashionable as a mode of clandestine marriage in polite circles.”²⁶ Gretna Green and Scotland marriages were, based on the numbers given by Stone, probably much less common in reality than in fiction and visual arts. The problem was that the

²³ Austen, *Pride and Prejudice*, 261

²⁴ Stone, *Road to Divorce*, 131

²⁵ Stone, *Road to Divorce*, 131

²⁶ Stone, *Road to Divorce*, 131

possibility to elope and get married without the permission of parents raised a lot of anxiety, especially among those with larger estates, since there was a constant fear that their daughters might be persuaded to get married to a person without a title or a money, thus endangering the dynastic aims of the family.

In a novella *A Woman's Love* (1843) by Amelia Opie, the main character's mother eloped to Gretna Green, which her family refused to forgive. In the novella, this serves as a warning to the protagonist, who is tempted to runaway with her love interest, as her mother would not allow them to get married. But since she was told how much pain her mother's elopement gave to her family, the heroine refused to go, thus making it a cautionary tale for the readership. In Susan Ferrier's *Marriage* (1810), the main character ran away to Scotland to marry a young man, because of her notion of romantic love, instead of an old rich man that her father chose for her. But very soon both spouses realized the rashness of their decision and the marriage proved to be very unhappy, creating another cautionary tale for readers, how running away against parental wishes can become disastrous.

After 1753, the marriages performed in Scotland created a problem for the judges in England. It took them almost a hundred years to decide, whether these marriages were legally binding in England and consequently, whether the children of the couple were legitimate. It was also really important for the women, if they were under coverture or not and if they had any right to jointure after their husband's death. Apparently, this problem was not easy to solve, since even the two main courts of the common law, the Court of Common Pleas and the Court of King's Bench, were deciding in opposite ways.²⁷ However, the judge had to decide only the marriages that were brought to court to be disputed. If the couple got married and never asked the court for termination of the marriage, nor was it disputed by a third person, they could probably live just like any other married couple. This meant that the wife's identity

²⁷ Stone, *Road to Divorce*, 133-134

legally ceased to exist until her husband's death and their children could inherit the family estate after their father's death.

However, not all clandestine marriages performed in Scotland were valid. According to the Marriage Act, all marriages of persons under the age of twenty one were "absolutely null and void to all Intents and Purposes whatsoever."²⁸ This provision applied not only to the marriages in Scotland, but also in case of runaway marriages, where one or both of the spouses lied about their age. On the other hand, the invalidity of marriage would probably be disputed by the parents of the groom rather than those of the bride. A young woman in such a position would be considered damaged goods and the family would have some trouble to find her another husband. Whereas a young man whose marriage was invalidated, would find himself a subject for gossip, but it would probably not influence any further chances of marriage.

3.2.2 Contract marriage

Contract marriages were a very peculiar type of wedding ceremony. It operated on an assumption that "a present and perfect consent alone maketh matrimony, without either public solemnization or carnal copulation."²⁹ These contracts were made verbally and often in private, which was very hard to prove in front of a court. If such a contract was done in present tense, it was legally binding, but only in canon law, therefore it was only enforceable by law in front of an ecclesiastical court.³⁰ It had to be done in present tense to be legal, but it was possible to attach conditions to it, such as the agreement of parents. The conditions could have been only implied, if for example one of the couple often repeated, previous to the

²⁸ *An Act for the Better Preventing of Clandestine Marriages [1753]*, 2005, 15.3.2013
<<http://freepages.genealogy.rootsweb.ancestry.com/~framland/acts/1753.htm>> 3

²⁹ Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts* (London, 1686) 14

³⁰ Stone, *Road to Divorce*, 69

contract, that he or she cannot get married unless something happens, some judges would think this a valid condition for the contract.³¹

If the contract was performed in the present tense, the couple could live lawfully as man and wife. The problem was that only canon law recognized this type of marriage, meaning in common law, which dealt with property, there was no legal relationship between them. So the woman did not get any jointure after the death of her husband and their children were illegitimate. On the other hand, with this type of ceremony there was no coverture, therefore the woman could dispose of her property in any way she saw fit and she kept her legal identity.³²

According to Stone, this ceremony was more usually used by men who never intended to marry, to persuade the girl.³³ This type of marriage was not, of course, very popular with the common law judges. It created a lot of problems in courts and there was a number of suits “for the breach of contract” filed every year. That was probably one of the reasons, why Lord Chancellor Hardwicke wrote a special provision for this type of ceremony in his *Marriage Act* of 1753.

XIII. And it is hereby further enacted, That in no Case whatsoever shall any Suit or Proceeding be had in any Ecclesiastical Court, in order to compel a Celebration of any Marriage in facie Ecclesiæ, by reason of any contract of Matrimony whatsoever, whether *per verba de præfinti*, or *per verba de futuro*, which shall be entered into after the twenty-fifth Day of March in the Year one thousand seven hundred and fifty-four.; any law or Usage to the contrary notwithstanding.³⁴

³¹ Stone, *Road to Divorce*, 72-23

³² Stone, *Road to Divorce*, 69

³³ Stone, *Road to Divorce*, 73

³⁴ *Marriage Act*, 3

This provision made the contract marriages illegal and unenforceable. That did not mean that they were still not used to seduce girls with empty promises. However, after 1754, if a girl let herself be seduced by believing that they were “married in the eyes of God,” the only thing left for her to do was to persuade her seducer to marry her publicly in a church. But if her seducer got married in church afterwards, she had no claim and no possibility to sue for breach of contract.

3.2.3 Public marriage

Public marriage was the only legal ceremony after 1753. The rules for this type of marriage were set by the Hardwicke Marriage Act and they were enforceable as of 25th March 1754. By creating a set of rules that had to be followed during a marriage ceremony, Hardwicke tried to provide courts with sufficient proof, when it came to deciding cases concerning controversial marriages. Over the course of his career, he became familiar with some of the most common problems that arose at court during the various marital conflicts that were sometimes brought to all three sets of courts of law.

The impending marriage had to be announced by banns “in the Church or Chapel belonging to such Parish or Chapelry wherein each of the said Persons shall dwell”³⁵ over the course of three weeks preceding the marriage. To prove that it happened, the local parson had to issue a certificate to the couple. In case they wanted to avoid the public calling of the banns, there was a possibility to pay for a licence, but unlike in the years previous to 1753, it was issued only in the church of the couple’s residence. However, the Act states the duration of residence had to be only “the Space of four Weeks immediately before the granting of such Licence.”³⁶ Stone claims, that this was often used by couples that wanted their wedding outside of their respective parishes, they “rented rooms for a month in another parish so as to

³⁵ *Marriage Act*, 1

³⁶ *Marriage Act*, 2

qualify for taking out a licence for marriage in that church, thus de facto carrying out a clandestine marriage in full legal fashion.”³⁷ There was also a possibility to lie about the place of residence, which was the only thing that could have been untrue on the marriage certificate that did not make the marriage void according to the tenth provision of the bill. It was called “the Lord Holland clause,”³⁸ because Henry Fox, Lord Holland was himself a beneficiary of a clandestine marriage and when he could not overturn the bill completely, he at least made sure there was still a loophole.³⁹

The consent of parents or guardians also became essential if one or both of the couple were under the age of twenty one. If the marriage happened it could have been proclaimed null and void by the parent at any time. If only the banns were read, they were again rendered void just by public declaration of dissent in the church in the time of the publication.⁴⁰ In special cases, for example if the parent or guardian was considered *non compos mentis* (not of a sound mind) or was withholding the consent without a proper reason, based on a petition, Lord Chancellor, Lord Keeper or the Lords Commissioners of the Great Seal, could grant consent instead of the parent or guardian.⁴¹ This was, however, probably used only rarely, since the parents and guardians often held “the power of the purse”⁴² as Stone calls it, through which they could quite effectively pressure their children.

This Act also stated that a marriage ceremony could be celebrated only in a church or a chapel, in front of at least two witnesses besides the parson and then entered into the marriage register. The bill also contained a form, which was the only way to fill out the register:

³⁷ Stone, *Road to Divorce*, 129

³⁸ Stone, *Road to Divorce*, 129

³⁹ Stone, *Road to Divorce*, 129

⁴⁰ *Marriage Act*, 1-2

⁴¹ *Marriage Act*, 3

⁴² Stone, *Road to Divorce*, 58

A. B. of [the] Parish
 and *C. D.* of [the] Parish
 were married in this [Church] by [Banns] with Consent of [Parents] this
 Day of [Chapel] in the Year [Licence] [Guardians]
 by me *J. J.* [Rector
Vicar
Curate]
 This Marriage was solemnized between us *A. B.* in the Presence of *E. F.*
C. D. *G. H.*

Fig. 2: Prescribed form for filling out the marriage register after 1753

In 1836 An Act for Marriages in England was issued, which added to the *Marriage Act* of 1753 the possibility of obtaining a certificate from a registrar's office instead of a licence or publishing banns. It also became possible to get married in the registrar's office instead of in a church, meaning that a civil, non-religious marriage became possible.⁴³ This again shifted the power and the money coming out of weddings from the Church to the state, because the registrar's office belonged under the state administration. The shift from the Church to the state was significant in more areas of life than just marriage ceremonies. It was a result of a slow secularization of the state, mostly in the state administration. The next step was due to the *Divorce and Matrimonial Causes Act of 1857*, which took away all matrimonial affairs from ecclesiastical courts that meant even less issues to be decided by the Church.

3.3 Property rights

After 1753, as mentioned above, every woman legally ceased to exist at the moment of her marriage. The female coverture lasted since that moment until the death of her husband, her own or, very occasionally, until their divorce. The woman could not represent herself at court, she could not sign any legal documents and any contracts signed by her were invalid. So were contracts that she signed before her marriage, which is why "a woman could not

⁴³ A transcript of the 1836 Act for the registering of Births, Deaths, and Marriages in England, 2001, 19.4.2013 <<http://freepages.genealogy.rootsweb.ancestry.com/~framland/acts/1836Act.htm>>

enter into a pre-marital contract with her intended husband directly, since her subsequent marriage annulled the contract, so trustees had to be interposed.”⁴⁴

A married woman also could not inherit anything directly. In absence of a will that would appoint trustees, the inheritance went directly to her husband and it was up to him to decide what became of it. In this way, Amelia Opie mentions only briefly that the heroine of her novella *A Wife's Duty, A Tale* (1843), inherited the whole of her mother's fortune: “My mother left no will, as she wished me to inherit every thing,”⁴⁵ but the sentence continues: “but in a little paper directed to Pendarves she desired that an income might be settled on Juan and Alice.”⁴⁶ It is automatic that the one with power over the inheritance was going to be the husband, although the property came from the wife's mother.

Following the loss of legal existence, a married woman could not directly own any property. She could have a separate estate in the hands of trustees, but any other property she had before the marriage or property she came into during the marriage, belonged to her husband. The husband “could do what he liked with the personal estate, including furniture, jewels, and money, and could enjoy the income of any real estate.”⁴⁷ If not agreed otherwise prior to the marriage, the wife only had as much money as the husband was willing to provide for her. This becomes one of the points about the situation of women that Mary Wollstonecraft proves in her novel *Maria or The Wrongs of Woman* (1789): “[The husband] may even spend in dissipation, and intemperance, the very intemperance which renders him so hateful, her property, and by stinting her expences, not permit her to beguile in society, a wearisome, joyless life; for over their mutual fortune she has no power, it must all pass through his hand.”⁴⁸

⁴⁴ Erickson, 104

⁴⁵ Opie, *Wife's Duty, A Tale*, 78

⁴⁶ Opie, *Wife's Duty, A Tale*, 78

⁴⁷ Stone, *Uncertain Unions and Broken Lives*, 18

⁴⁸ Wollstonecraft, *Maria, or The Wrongs of Woman*, 115

Mary Wollstonecraft was a social critic, which can be especially seen in her essay *A Vindication of the Rights of Woman* (1792). Her ideas voiced in this essay were towards the end of her life transformed into a novel that she did not have time to finish. *Maria, or the Wrongs of Woman* (1798) attempts to show how patriarchal society of the eighteenth century worked. The main protagonist, Maria, was in a loveless marriage that went wrong because of money. The book shows what rights the husband had over his wife and, on the other hand, the helplessness of a woman who had no possible means of defense against her own husband. There were also no legal means that would make the husband give money to his wife, unless she sued him at court. However, that she could only afford if she had the means to sue and a male that would stand in the court for her.

The problem also was that the husband had a right to any property she came into possession of, including anything the woman earned by her work. There was no defense against it. Mary Wollstonecraft mentions this fact, quite bitterly, in *Maria* (1789): “The tender mother cannot lawfully snatch from the gripe of the gambling spendthrift, or beastly drunkard, unmindful of his offspring, the fortune which falls to her by chance; or (so flagrant is the injustice) what she earns by her own exertions.”⁴⁹ This fact was often mentioned in connection with separation. Stone claims that it was not uncommon for a husband to leave his wife and only come once in a while to take all the money she had earned, and she had no legal possibility to defend herself. In one of the case studies in *Uncertain Unions and Broken Lives*, Stone recounts how, during the course of judicial divorce, Leonard Calvert had all the property of his separated wife seized, in order to humiliate her publicly and leave her with nothing to her name. Since he was still her lawful husband, even though they lived separately for many years at that point, he had a right to everything she bought after the separation,

⁴⁹ Wollstonecraft, *Maria; or the Wrongs of Woman*, 118

including her house, movables and clothes. He left her with nothing “saving what was on her back.”⁵⁰

Yet there was a way the woman could extort money from her husband or push him towards divorce or proper marriage, but since it was quite radical, it was probably only used in marriages that already fell apart. Since the man was the only one with rights to property, he was also responsible for any debts contracted by his wife. Stone mentions this procedure in several of the case studies in *Uncertain Unions and Broken Lives*. A wife had a right to run debts with shopkeepers, which although they were limited to “necessaries appropriate to her station in life,”⁵¹ they could run quite high. When asked for the money, she would tell them to sue her husband for it. According to Stone, it was used for example by Anne Ordway in case *Elmes vs. Elmes*. She resorted to this in order to “force the civil courts to decide upon the validity of their marriage.”⁵² The court had to decide, whether they were married to order her supposed husband to pay the debts. This was apparently used quite often for similar purposes, since it was one of the few ways a wife could take her case to court, especially by women from the labouring class. However, this course of action was used also by women of higher social standing. Stone reports the case of the Marchioness of Westmeath, who during a protracted legal battle with her husband had him arrested and put into the King’s Bench prison, because he refused to pay her debts for necessities.⁵³

The only separate property a wife could own had to be in hands of trustees, so that it would not fall under coverture. According to Stone, this often became a sore point for the husband, especially when the couple was not on good terms with one another, so that the wife would not allow the husband access to the money. Cases like these often resulted in cruelty towards the wife and sometimes even in imprisonment in a secluded house in the country,

⁵⁰ Stone, *Uncertain Unions and Broken Lives*, 315-344

⁵¹ Stone, *Uncertain Unions and Broken Lives*, 18

⁵² Stone, *Uncertain Unions and Broken Lives*, 136

⁵³ Stone, *Uncertain Unions and Broken Lives*, 583

where she would be tormented to give up her separate estate in favour of her husband, or he could have her locked in a mental institution. Stone recounts a case of Thomas and Catherine Turst that end up at court and mentions that such treatment of a wife was not uncommon. The husband had three ways to pressure the wife into complying, which were “consistent wheedling or bullying – being ‘kissed or kicked,’”⁵⁴ taking away their children and “kidnapping followed by indefinite incarceration at home or in a madhouse, sometimes accompanied by physical torture.”⁵⁵ The only illegal from those three was the last one, where it was possible to intervene, but only when the woman had relatives or friends who were able to find out where she was and get a writ of habeas corpus. This case is also similar to the plot of *Maria, or the Wrongs of Woman* (1789) by Mary Wollstonecraft. Maria’s story is recounted from a cell in a mad-house, where she was put by her husband in order to force her to sign over property that she inherited from her uncle and that he secured for her separate use. Wollstonecraft again uses this to criticize society, in which such a thing was not only possible, but legal and common.

⁵⁴ Stone, *Uncertain Unions and Broken Lives*, 347

⁵⁵ Stone, *Uncertain Unions and Broken Lives*, 347

4. Life After Marriage

Only when marriage ended was a woman free to enjoy her rights freely. Before her first marriage, the woman was usually governed by either her father, mother or guardian and during the marriage her rights were completely covered by her husband. That is why, when searching through archives, “in many cases the reason a woman appears in a record at all is because her husband had died”¹ or because of the legal documents that survived from her divorce. Although death of a husband and divorce were both very painful occurrences in the life of a woman, they could have had a very different outcome considering her financial situation. Also a widow was usually quite respected in the society, or at least her position was not shameful. On the other hand, a divorced woman became ostracized by her former social circle and certainly never held the same position as before.

4.1 Widows

When it comes to widows, there are always two archetypes that come to mind and that were already present in the writing of the eighteenth century, the merry or wicked widow and the poor or virtuous widow. The merry widow was “often represented in the era’s cautionary tales and whose widowhood is typically marked (in society and in fiction alike) by a looseness of social and sexual behaviour that implicitly challenges the historically entrenched patriarchal order.”² On the other hand, the virtuous widow is “selfless, benevolent, community-oriented, asexual, maternal,”³ as Karen R. Bloom puts it.

¹ Erickson, 154

² Stephen C. Behrendt, “Women without Men: Barbara Hofland and the Economics of Widowhood,” *Eighteenth-Century Fiction*, Volume 17, Number 3, April 2005, 482

³ Karen R. Bloom, “My Worldly Goods Do Thee Endow: Economic Conservatism, Widowhood, and the Mid- and Late Eighteenth-Century Novel,” *Intertexts* 7.1 (Spring 2003), 9

Bloom claims that this division also stemmed from the evolving capitalism of the eighteenth century and from male fear of lone women hoarding property that they did not intend to pass on through marriage. This division between a good and a bad widow was reinforced by novels that performed the function of conduct books in instructing the readers about the rules of society. The good kind of widow, as she appeared in novels of the eighteenth century only lived economically off of her late husband's estate and helped others, but she never tried to earn a living for herself. This archetype can be found for example in Sarah Scott's *The Description of Millenium Hall* (1762) in the character of Mrs Morgan, whose first-impression description involves: "One would almost think nature had formed her for a common parent, such universal and tender benevolence beams from every glance she casts around her."⁴ On the other hand, there was the wicked widow that was connected with an urban setting, and who either carelessly spent money or tried to earn more only for the sake of being richer. One of her most important features was sexuality, which was not repressed at all and sometimes it came to be the main influence on her conduct. This type of widow can be seen for example in the character of Madame Duval from *Evelina, or the History of a Young Lady's Entrance into the World* (1778) by Frances Burney. Madame Duval's behavior is apparently controlled by craving for "money, control, and self-gratification."⁵

The archetype of the merry widow that is sexually active probably stemmed from male "fear of women who were not under the governance of husbands, women who controlled their own property and who might run amok with their new-found power."⁶ After the death of a husband, a woman was finally under no one's rule and she could freely dispose of the property in her possession. A self-sufficient woman with awakened sexuality was a threat to order in a society where women did not legally exist through a major part of their lives.

⁴ Sarah Scott, *A Description of Millenium Hall and the Country Adjacent*, (Salt Lake City: Gutenberg, 2008), 7

⁵ Bloom, 9

⁶ Erickson, 153

4.1.1 Inheritance from a husband

Despite such overt anxiety in literary texts, a widow was not always predatory or even self-sufficient. She depended, not only on how much property her husband had when he was alive, but also how he disposed of it before his death. For example, the struggle for the survival of her family or herself with insufficient means can be seen in Defoe's *Moll Flanders* (1722). The main character assumed the name Moll Flanders following the death of her husband, a banker, who died bankrupt and left her with nothing. However, Moll Flanders was not the virtuous widow and the way she took care of herself can be hardly thought moral. After the banker's death, she was left with two children and barely any means to support themselves. But since refused to become self-sufficient, despite the circumstances and instead she just sat around "wasting that little I had, weeping continually over my dismal circumstances, and, as it were, only bleeding to death, without the least hope or prospect of help from God or man."⁷ Because of this unwillingness to change her situation by trying to earn money, all that was left to such a character was a life of sin as a thief and a prostitute. Thus instead to becoming a virtuous widow that would do little menial jobs and support her children, she became the wicked widow that abused men and lived an immoral life.

The property of a man without a will was divided by ecclesiastical courts, which was also overseeing the procedure of making a will "on the grounds that the ostensible motive for bequests was the soul's health after death."⁸ The division of property of a man who died intestate (without a will) was set and the rules did not change until the beginning of the twentieth century.⁹ The widow was awarded one third of the property, the other two thirds were divided equally among the children. In case there were no children, the widow became the only heiress. The widow could become an administratrix of her late husband's property,

⁷ Defoe, 108

⁸ Erickson, 27

⁹ Erickson, 26

meaning she was the one who made a list of all the goods and then went through the legal procedure in the probate court. She was also the one who took care of the inheritance of the children until they reached adulthood. According to Erickson's study of documents, in most cases the woman chose to become the administratrix of the estate, unless it was so deep in debt that she had no way of saving it.¹⁰

If there was a will, it was proceeded according to it. Before the eighteenth century, according to ecclesiastical law, the man could only bequest one third of his property at will. The thirds belonging to the wife and the children were called "reasonable parts" and were protected by law, so that it was not possible to disinherit neither the wife nor the children. That changed at the end on the seventeenth and the beginning of the eighteenth century through a series of statutes, which effectively abolished the "reasonable parts," so that it was upon the discretion of the husband to dispose of his property in his will.¹¹ The widow was quite often appointed executrix of her husband's estate in his will, meaning that it was up to her to divide the property and deliver it or to look after it if necessary.¹²

However common Erickson claims that a widow was as the administratrix and executrix of an estate, novels mostly avoid this subject. Most times there is only the fact that the husband indeed died and sometimes even that he left some property to the wife and children. Mentions of a last will can be found, for example in *The Description of Millenium Hall* (1762), in the story of Mrs Morgan, the owner of the Millenium Hall: "When Mr Morgan's will was opened, it appeared that he had left his wife an estate which fell to him about a month before the commencement of his illness, where we now live."¹³ However, it is not clear whether she took care of any other aspects of his inheritance or not, only that she

¹⁰ Erickson, 174

¹¹ Erickson, 28

¹² Erickson, 156

¹³ Scott, 64

“settled all her affairs,”¹⁴ and retired to the country. This lack of further descriptions of the widow’s property rights can be explained by a similar romantic notion that influenced the feeling about marriage settlements in the eighteenth century. If it was unromantic to think about monetary matters before the beginning of a marriage, it was certainly not proper to talk about the way inheritance was conducted right after the union ended.

When there was an executor mentioned, it was often a man that was to take care of the property and also of the widow and her family, like in *The Clergyman’s Widow, and her Young Family* (1812) by Barbara Hofland. The dying husband on his deathbed appealed to his companion to write to his widow and told him: “you will arrange all my affairs in the way I wish.”¹⁵ Hofland is known for her three books about widows that are left to fend for themselves, usually in most dire circumstances. Her books were directed to children and they have a strong didactic tone, which can be visible especially in the way the children support their mothers. In the preface to *The History of an Officer’s Widow and Her Young Family* (1809), there can be seen the author’s intention that the book should be read by children, especially boys, for both their amusement and education.¹⁶

Poor, virtuous widows that managed to take care of the family despite bad circumstances, like the heroines of Hofland’s novels were used more often in literature than widows with big inheritance. Another of Hofland’s novels, also considered a didactic book for children is *The History of a Merchant’s Widow, and her Young Family* (1814). Because of a bad decision, the protagonists’ husband lost all their money in trade and then died, leaving the family destitute. Like in *The Clergyman’s Widow* (1812), the whole family of the merchant had to work together to make a living. In all three of her novels on the subject of widows, “by the novel’s end the widow has not been ruined by her experience but has actually endured and

¹⁴ Scott, 64

¹⁵ Barbara Hofland, *The Clergyman’s Widow, and her Young Family*, (London: Arthur Hall, Virtue & Co., 1859)

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¹⁶ Behrendt, 486

in fact largely triumphed.”¹⁷ The social, moral and economic issues that Hofland dealt with in her novels can be more commonly found in novels from Victorian period and more importantly in realism, which Behrendt ascribes to the fact that the writer was also a part of the evangelical tradition. One of the main features of the evangelical Nonconformity was the attempt to disrupt “the traditional systems of dependency,”¹⁸ that were usually associated with the Church, but Hofland showed how it was possible to apply it to family.

The property that was bequeathed to the widow could have been limited to three different periods of time, for life, for widowhood or for the time of the minority of their offspring. All of them limited the possibility of transmitting the inheritance further, either through remarriage or inheritance. The limit to remarriage was usually put on the annual allowance that the widow was bequeath in the will, since seems that it was generally considered that the new husband will take care of her financially. Inheritance for life was often tied to land and houses, to preserve the proper dynastic succession, which was also the reason for the limitation during the heir’s minority.¹⁹

4.1.2 Jointure

Jointure was a way to provide for a woman before her marriage in case she became a widow. The term originated in the Middle Ages from “a joint tenancy of land by husband and wife, in which the survivor of the two enjoyed the income from the land so held.”²⁰ But by the fifteenth century, jointure changed into “an annuity arising from the rent charge of specified land.”²¹ This land was bound to pay for the jointure, so neither the woman’s husband nor his heir could dispose of it during her life, since it was often bought with the money that was brought into the marriage by the wife. In case the widow had to enforce her promised jointure,

¹⁷ Behrendt, 484

¹⁸ Behrendt, 485

¹⁹ Erickson, 166-169

²⁰ Erickson, 25

²¹ Erickson, 25

she had to go to a court under equity law. Equity dealt primarily with trusts, which were not known in the common law.²²

Jointure had to be settled before the wedding, usually by the groom and the bride's family. It was one of the main parts of the marriage settlement that was drawn up, where the land or rather the sum to be paid was specified. The necessity to procure a jointure is stressed in the beginning of the novel *Pin Money* (1831) by Catherine Gore. When talking about the future marriage, the bride's aunt argues: "What would you have done with your expenses, if your father and mother had thought and talked with as much levity on the subject of settlements as you do?"²³

Without this annuity the widow was left only with what her husband deemed right to give her in his will or with the one third of his property. But with either of these, it was possible that she was left penniless. A man had a right to write his wife out of his will completely, without giving a reason, and leave her with nothing. The one third of the estate if he died intestate was sometimes just a trifle, like when the property was as small as for example £10, the third certainly was not enough to support her. With a set jointure, there was at least some certainty as to the widow's future after her husband's death.

4.1.3 Disposal rights to property

Beginning by her husband's death, a woman was free of coverture, she became *femme sole*. She could own property and dispose of it, unless stated differently in the will of her husband. Widows could also sign contracts, so it became possible to own and run a business without any male protection. There was also no risk that their husbands might come back and demand money the women earned, like they had a right to even if they deserted their wife

²² Erickson, 25-26

²³ Gore, 6

during their marriage. Of course, the women became responsible for all their financial affairs and their own debts.

As said above, there were often limitations to how much a widow could dispose of the property she inherited. If she became an executrix or administratrix, she was free to use her inheritance and also whatever of her husband's estate was not appointed to anyone else and dispose of it. In the role of an executrix, she could also use her children's money until they reached adulthood. A legally appointed guardian had to invest the money and maintain his wards from the interests, the executrix often did not have to even show an account of how she handled it.²⁴ Property inherited with limitations was bound to stay the way it was for the next heir. It was not possible to dispose of it in any way, either by selling or bequeathing it.

As for bequests, widowed women were able to make a will, unlike during their marital coverture. Whatever property she had that was not limited to her lifetime, she had the possibility to leave to whomever she wanted. Widows were apparently more likely to spread their property to their more extended family than their former husbands, but that can also be explained by the fact that they were not leaving a family behind.²⁵ Since married women almost never made wills, unless following a special permission from their husbands, the age profile of women making wills was higher than that of men. The widow's children were also often older, which meant she did not always need to provide for them.²⁶ So in Opie's *A Wife's Duty* (1843), the heroine's mother "desired that an income might be settled on Juan and Alice,"²⁷ who were their home servants brought back from America.

Moreover, widowed female relatives that took care of orphaned heroines or girls from poor families can be found in all types of novels in the eighteenth and nineteenth century. In *The Description of Millenium Hall* (1762) by Sarah Scott, a novel representing the ideals of

²⁴ Erickson, 171

²⁵ Erickson, 212

²⁶ Erickson, 211-212

²⁷ Opie, *A Wife's Duty, A Tale*, 78

morality and of the bluestockings, there can be found two different instances of a widow taking care of other people. There is Lady Sheerness from the story of Lady Mary Jones who “was taken by her aunt, Lady Sheerness, who declared she should look upon her as her own child, and indeed her indulgence verified the truth of her declaration.”²⁸ Widow with a large jointure, Lady Sheerness was spoiled by her husband before his death and is a typical example of a young, sexually awakened widow that tries to take care of a ward, but fails badly. Her opposite is Lady Brumpton a different relative of Lady Mary Jones, who, though of a smaller fortune, was described as “generous and humane”²⁹ and gives Mary the desired home.

The novel of sensibility can be represented for example by the epistolary novel *Evelina* (1779) by Fanny Burney, where this relative is her grandmother, who is a typical representative of the wicked widow that throws away the money she inherited from her husband. And, for example, *Jane Eyre* (1847) as a bildungsroman features Mrs Reed, Jane’s widowed aunt that is the source of the heroine’s suffering while growing up. Although she is rather well situated, her parsimony towards Jane is why she sent her to Lowood and a part of what made Jane’s start in life much harder.

Both literary archetypes of the virtuous and wicked widows can be seen in literature alongside one another. They often appeared in a story together as opposites, showing the two possible outcomes of widowhood, depending on the moral character of the woman and especially on how she treated the estate she was the sole owner of. Like in *The Millenium Hall* (1762) the two widows can offer different lives to the heroine, both symbolizing the ways of life thought proper at the time.

4.2 Divorced Women

²⁸ Scott, 72

²⁹ Scott, 82

In eighteenth- and nineteenth-century England, it was possible to get a divorce, but it was quite different from the contemporary idea of a divorce. It was not an easy endeavor and by no means a cheap one. A proper divorce, the way it is imagined today, was available only to a small fraction of society that had sufficient means to pay for the litigation as well as acquaintances in high places. But by the year 1857, which is the final date of this study, few scandals shook the English society enough to persuade the Parliament to make a change.

Depending on the type of divorce, the situation of divorced women varied considerably. Sometimes, they only gained financial liberty from their husbands while they were entitled to alimony and pin-money, yet in other cases, a woman could lose everything through divorce and be left destitute. But whatever her financial situation was, a public divorce, especially on the grounds of her adultery, always destroyed her reputation and social standing.

4.2.1 Desertion of a spouse

Both the wife and the husband had a possibility to simply walk away from his or her family and never return. This step was usually taken by the poor and the members of the laboring class, who could not afford any other means of separation and who had a chance to form a new identity in another county. Since the possibility to be discovered, especially in bigger cities was quite small, men may have often started a new household under a different name and were never tried for bigamy. There was also a more socially acceptable form of desertion and that was becoming a soldier and going to war. The possibility to just leave, often made the woman dependent on poor relief, since out of the number of women registered for it, around one tenth were deserted wives.³⁰

³⁰ Stone, *Road to Divorce*, 141-142

Up until 1857, deserted wives were still regarded as married and therefore under coverture. Even if she started to earn her own income, the husband had a possibility to come back at any time and take away all her earnings. But the *Divorce and Matrimonial Causes Act* of 1857 allowed that when a wife was deserted by her husband for more than two years she could apply to the authorities “to protect any Money or Property she may acquire by her own lawful Industry, and Property which she may become possessed of, after such Desertion, against her Husband or his Creditors, or any Person claiming under him.”³¹ This provision in the Act was a first step towards protecting female property rights, since it went directly against the principle of coverture.

Desertion, or elopement, was also sometimes the only means for an abused wife to free herself from her husband. Since there was no legal defense, it was often the only choice to just run away. But the woman’s situation was more complicated. When a man deserted his wife, it was possible to sue him at the Consistory Court for restitution of conjugal rights, but otherwise there was almost no way to make him come back to the family by force and stay there. Whereas when the wife that ran away was caught again, it was possible to use any means necessary, including violence, to induce her to stay with her husband. She was often blackmailed that she would never see her children again, since they were in the sole custody of their father.

Elopement as the only escape can also be seen in *Maria, or the Wrongs of Woman* (1798) by the social critic Mary Wollstonecraft. After her husband’s attempt to prostitute her to a business partner, Maria proclaimed “I mean immediately to quit his [her husband’s] house, never to enter it more. I will provide for myself and child. I leave him as free as I am determined to be myself – he shall be answerable to no debts of mine.”³² Since her husband was refusing to let her go, because of an inheritance from her uncle that he wanted to gain,

³¹ *An Act to Amend the Law Relating to Divorce and Matrimonial Causes in England*, 12.4.2013, 2005, <<http://freepages.genealogy.rootsweb.ancestry.com/~framland/acts/divorce1857.htm>>

³² Wollstonecraft, *Maria, or the Wrongs of Woman*, 120

Maria stole out of the house and ran away. After many months of being pursued and hiding in different lodgings, she wanted to leave for the Continent with her daughter. However, through a trick, Maria was confined into a madhouse, where most of the finished plot takes place. And since a husband was allowed to treat his wife in any way he pleased and punish her any way he saw fit, Mr Venables was, legally speaking, absolutely right to lock Maria away.

Wollstonecraft did not have time to finish her novel, so there are only some notes to how it was supposed to end, that created a number of different endings. In most of them, Maria and Mr Venables obtained some sort of judicial separation, mostly on the grounds of Maria's adultery with Darnford. But in the majority of the conclusions, there was no happy ending for Maria. In the patriarchal society which was the chief point that Wollstonecraft criticized, Maria was not allowed to be happy after a divorce from her husband. She apparently became mostly dependent on her lover socially and in some of the scenarios even financially and after he cheated on her, Maria miscarried their baby and consequently committed suicide. However, the one ending that appears to be finished the most, has Jemima finding Maria's first daughter and persuading her to live for the sake of the child and so they formed an all-female family. Wollstonecraft strongly disagreed with the power that men held over women and with the traditional position of a woman in the society. That is probably why the heroine of her book found ultimate happiness either in death or in a relationship completely free of men.

4.2.2 Wife-sale

Selling a wife was a legal way to obtain a public divorce, practiced by the lower classes of the English society. It was based on the presumption that a wife was the property of her husband and so he could dispose of her. There was a set procedure, based on selling cattle. The husband was supposed to put a halter around his wife's neck, lead her to a market and then sell her to whoever offered the most. In theory, it sounds rather insensitive towards the woman, but in reality, the buyer was usually the woman's lover, who agreed to this transfer, so they could live legally together. By selling her like this, the husband transferred all his rights and duties towards his wife, so that he was no longer responsible for her debts and she could not sue him for either money or restitution of conjugal rights. But this type of divorce did not change anything in the woman's property rights. From the coverture of one husband, she went directly under the coverture of a different husband. The problem with this procedure appeared when brought to court. If contested, the judges always ruled the wife-sale invalid and usually immoral as well. Yet, it was used more by people with not enough property to launch litigation and after a mutual agreement, it did not appear in front of a court too often.³³



Fig. 3: Wife-sale caricature from 1820 (source: <http://www.pemberley.com/janeinfo/rgnclfil.html>)

However, the existence of this custom in England created a sensation, especially during the second half of the nineteenth century. It is apparent that not all rumours were true, since according to official documents, there were only about 50 wife-sales in between 1820 and 1830, which was the highest number in the recorded history of this phenomenon.³⁴ This myth of wife-sales was apparently a very popular idea, since it was also used as a basis of a plot of

³³ Stone, *Road to Divorce*, 143-148

³⁴ Stone, *Road to Divorce*, 145

a novel by Thomas Hardy *The Mayor of Casterbridge* (1886). While drunk in a market place, Michael Henchard sold his wife to a sailor in a public auction for five guineas. She lived for years thinking that the transaction was legal, but that is a point of ridicule to Hardy: “It may seem strange to sophisticated minds that a sane young matron could believe in the seriousness of such a transfer.”³⁵ It might have been hard to believe for Hardy, but around the time this episode was supposed to occur (in the 1860’s) there were still at least two wife-sales happening every year, meaning that the procedure was believed to be legal, or at least useful. However, Hardy was writing in the 1880’s, when the number of wife-sales already dropped to approximately one per year, so the idea might have become quite ludicrous to the higher classes, especially to people with education. Therefore when Henchard’s wife came back years later, in order to hide the fact that he sold her years before, he married her again, since such a discovery would make him a laughing-stock of the whole village where he was mayor.

4.2.3 Private separation

A deed of private separation was a solution for those that could afford a lawyer and so it was used mostly by the middle and upper classes. Although it was widely used, it was hard to defend it at court because most judges refused its validity, since the basis of the contract went against all three branches of the English law. This procedure developed in the seventeenth century due to the abolition of ecclesiastical courts, which handled separation, during the Revolution. At first the document put together by lawyers was rather improvised, but over the following hundred years, a set of rules developed that was followed in most deeds of separation. The financial matter consisted of two parts, a bond by the husband to provide an annuity either for life or for the time of the separation, and a bond by trustees on behalf of the wife that the husband was no longer responsible for her debts.³⁶

³⁵ Thomas Hardy, *The Mayor of Casterbridge* (London: Penguin, 1994) 26

³⁶ Stone, *Road to Divorce*, 153

Other than financial matters, the deed also specified some points that were probably the main reason why a woman would consider signing it. First of all, it “assured her economic freedom, by empowering her to act financially in all respects as if she were a single woman.”³⁷ A bond from her husband was also supposed to make sure of her personal freedom, meaning that he promised never to use force to make her do anything, including suing her at court. Thirdly, the husband allowed his wife to live where she chose and if there was anyone living with her, he was not supposed to be liable to be sued at court. Both the husband and the wife also signed that they would not sue each other for any reason. The last clause often was that one, or more, of their younger children would live with their mother under her custody. All of these provisions in the deed were (at least in part) against the common and cannon law or equity.³⁸

For the wife, the consequences of signing a deed like this were that she became independent financially and had the same right to property as an unmarried woman or a widow, but her freedom was restricted by the phrasing of the deed. The problem was that this deed was dependent of the consent of the husband. When he decided to revoke it, or simply ignore it, he had a chance to do so. Sometimes he would take it to court, usually by suing his wife for restitution of conjugal rights or, on the other hand, for divorce on the grounds of adultery. Since these suits belonged to the ecclesiastical court, the contract was completely ignored, because the ecclesiastical judges never recognized the institute of private separation by deed.

Private separation was regarded by a majority in the society as immoral and as such, it was not a favourite topic in the fiction of the eighteenth and nineteenth century. But Lady Emily Nugent, the Marchioness of Westmeath, born as Lady Emilia Cecil, daughter of the 1st Marquis of Salisbury, published *A Narrative of the Case of the Marchioness of Westmeath* in

³⁷ Stone, *Road to Divorce*, 153

³⁸ Stone, *Road to Divorce*, 153

1857, recounting her legal battle with her husband. The Marquis and Marchioness started having marital problems soon after their marriage. After a few big arguments and reconciliations, in 1818 they signed a deed of separation, “by which £1300 a year was settled as a separate maintenance for Lady Westmeath”³⁹ and which also granted her full custody of their two children. They continued living in the same house, but in separate rooms for a year, until Emily was forced to run to her relatives because of George’s violent temper. The beginning of their protracted legal battle that took over fifteen years to resolve in a separation from bed and board was marked by a launching of a lawsuit for restitution of conjugal rights by George, when he completely ignored the private deed they signed. After the long dispute between the two spouses, Emily Nugent decided to publish her version of the whole process. It was, of course, rather biased, but it was a surprisingly feminist publication for the year 1857. In the conclusion, Lady Nugent wrote “if I have assisted the spirit of inquiry now aroused, as to the dreadful state of laws, respecting married women in this country in any degree, my object is answered.”⁴⁰ The whole narrative was meant to help women in similar situation and also to prompt the Parliament to pass a bill they were preparing about divorce.⁴¹

Separation from a husband can also be often found in biographies of female writers. These separations appear to be mostly unofficial agreements between the partners, probably based on a deed. One such known example was Lady Mary Wortley Montagu, poet and letter writer. She separated from her husband for unclear reasons, most sources say because she fell in love with Francesco Algarotti, an Italian writer. But her relations with her husband remained good and he continued to pay her allowance and they kept correspondence until his death. She remained on the Continent, only returning to England a few months before her own death.⁴²

³⁹ Emily Nugent, *A Narrative of the Case of the Marchioness of Westmeath* (London: James Ridgway, 1857) 6

⁴⁰ Nugent, 213

⁴¹ Stone, *Uncertain Unions and Broken Lives*, 550-580

⁴² Shattock, “Lady Mary Wortley Montagu,” 300-302

4.2.4 Judicial separation

Matters of matrimony came to ecclesiastical courts and there were two possible lawsuits to be launched there that concerned matrimony and resulted in a change of situation of a married woman. The court could have been asked to nullify the marriage, most often on the grounds of bigamy or minority of one of the spouses. The second possibility became the chief reason for nullification of marriage after 1753, since the *Marriage Act* gave the power to contest the marriage of minors to their parents. Blackstone calls the nullification of marriage a total divorce, *a vinculo matrimonii* (divorce from marital ties; this term can be also applied to divorce by an Act of Parliament, which Blackstone as a common law lawyer did not recognize as a possibility), and stresses the fact that the reason for dissolving the marriage had to be present before the marriage, so that the marriage was not valid *ab initio*, from the beginning. The courts also could also only proclaim the marriage invalid during the lifetime of both spouses, it was not possible to do it retrospectively after the death of one of them. The problem was that with the nullification of the marriage, the woman lost all rights to the property of her husband, so if it was pronounced invalid after his death, she would lose all rights to jointure and any inheritance. Nullification also made any children of the couple bastards without any possibility to change it.⁴³

The ecclesiastical court was also able to grant a second type of divorce, *a mensa et thoro*, or a separation from bed and board. This was a suit brought by one of the spouses, most often after the physical separation had already taken place, mostly to determine the allowance for the wife. Based on the decision of the judge, the wife became *feme sole* in financial matters and she could also sue in court. This separation did not end marriage, it only allowed the couple to live separately and it was a way to enforce maintenance from the husband.⁴⁴

⁴³ Blackstone, 255

⁴⁴ Stone, *Road to Divorce*, 192

This money was sometimes called her *estovers* and it was up to the judge to decide the amount, based on the income and social standing of the husband.⁴⁵ Although they did not have to live together, they were not able to remarry. When apart, the husband was eligible to live with whomever he liked, but the wife had to live chastely and oftentimes alone. In case of any adultery on the side of the woman, she would immediately lose any rights to an allowance and would face public shame.⁴⁶ The suit for separation from bed and board on ground of adultery of the woman was one of the three steps taken by the husband in order to obtain a full divorce by an Act of Parliament. Which is why it was apparently sometimes used even when there was no real adultery, since it was not possible to get fully divorced without it. Such an example can be found in *The Emigrants* (1793) most often ascribed to George Imlay, when Mr. P. P- describes his relationship with Lady B-: “Lord B- anxious to perpetuate the name of his family, rejoiced at the opportunity of meeting with a man such as he conceived to be of my cast and disposition; an invited me to Lilbourn-house, with the hope, that by suborning his servants he would soon get clear of a woman, who had not produced him an heir.”⁴⁷ Although the plot of this epistolary novel occurs mostly in America, this part was set in England. Imlay was, like his famous lover Mary Wollstonecraft, a known critic of the matrimonial state and the laws concerning it, which can also be seen in *The Emigrants*, where most of the marriages were unhappy and the women expressed the feeling of oppression.

After 1857 suits like these were transferred from ecclesiastical courts to a new court, set up by the *Divorce and Matrimonial Act*, the Court for Divorce and Matrimonial Causes. It was a part of a reform of the whole process of a divorce, as well as a proof of its legality. However, when the Parliament made divorce more affordable and easier, the need for judicial separation ceased and it was not used as often, although it still appeared on court documents

⁴⁵ Blackstone, 257

⁴⁶ Stone, *Road to Divorce*, 194

⁴⁷ George Imlay, *The Emigrants, or the History of an Expatriated Family* (London: Hamilton, 1793)73

until the twentieth century. Since the procedure to obtain a full divorce became simplified, the need for judicial separation did not arise that often anymore.⁴⁸

The story of Emily Nugent, the Marchioness of Westmeath, after a deed of private separation, continued by judicial separation from bed and board. Her husband launched a suit for restoration of conjugal rights, to force her to return back to him. As a reaction, Emily started a counter-suit for separation on grounds of cruelty. Eventually, the judge was on Emily's side as quoted in her *Narrative*: "Lady Westmeath has sufficiently proved allegation, so far as it charged her husband with cruelty, and is, on that account, entitled to a sentence of Separation from bed and board as prayed."⁴⁹ They remained separated for the rest of their lives without the possibility to remarry. But this decision did not end the litigation. The struggle continued over the alimony that Emily was supposed to be receiving from George and also over custody of their only child, Rosa. Lady Westmeath was prompted to publish her *Narrative* by the discussions in the Parliament about a change in the divorce procedure and protection of women's rights to property.

4.2.5 Divorce by an Act of Parliament

Parliamentary divorce was a solution in equity law for the sternness of common law when it came to dissolving marriage. Common law, as seen in Blackstone's *Commentaries*, recognized only nullification of marriage and separation from bed and board. The most important difference from the judicial separation was that the couple, or at least the husband, obtained a permission to remarry. The original demand for this loophole came from wealthy men with large property that needed a new wife to produce an heir to their estate. Originally it was open only to these "men with great estates and titles, adulterous wives, and no heirs."⁵⁰ The need to be propertied in order to get a parliamentary divorce, was given by how

⁴⁸ Stone, *Road to Divorce*, 194

⁴⁹ Nugent, 75

⁵⁰ Stone, *Uncertain Unions and Broken Lives*, 47

complicated the procedure was. It was necessary to get a judicial separation on grounds of adultery of the wife from the ecclesiastical court and to win a suit for criminal conversation against a supposed lover of the wife under the common law. After that the husband had to plead for a Parliamentary Act of divorce that needed to pass through both Houses of the Parliament and only after that the divorce became legal.⁵¹

To settle the divorce, the wife gave up all rights to her husband property, including jointure from their marriage settlement. In between the years 1700 and 1811, she was rewarded an annuity by her husband, the amount of which was prescribed by the Parliament in the Act that divorced them, so that she would not be left destitute. But this money raised a debate about rewarding immorality. That is why after a bill of divorce for Mr Loveden in 1811, who was so outraged about the money his wife was awarded, that he discontinued the proceedings, these rewards became conditional. The divorced woman was not allowed to remarry or have a lover, otherwise she would lose the annuity. So after the divorce, she had two options. Live with her lover, if he agreed to it, often without any money and ostracized by the society. Or she could have lived alone or with her family, but still her financial situation was not very bright and her social standing was probably often even worse than had she decided to be with the lover. The problem is that there are not many objective documents that could point out the real situation of a divorced woman.⁵²

But in fiction, the character of a divorcée was present, though not very prominently. Most often she appears as a wicked woman committing constant adultery, or eloping from her husband. In *Moll Flanders* (1722) by Daniel Defoe, one of the protagonists husband obtained a divorce from his wife for her. The wife, after giving birth to two children of another man during their marriage, “ran away from him with a linen-draper's apprentice, robbed him of

⁵¹ Stone, *Road to Divorce*, 323-324

⁵² Stone, *Road to Divorce*, 339-346

what she could come at, and continued to live from him still.”⁵³ It took the banker some time, but he obtained a ruling of a divorce, which resulted in her killing herself. That can be attributed to her losing all maintenance from her husband and a publicity which an act of divorce brought. The tradition of the wicked, cheating wife that deserved a divorce continued on through the nineteenth century. In Jane Austen’s *Mansfield Park* (1814), appeared the character of Maria who married Mr. Rushworth for his money then eloped with Mr. Crawford and lived with him for a period of time. Her punishment for this action was to “withdraw with infinitely stronger feelings to a retirement and reproach which could allow no second spring of hope or character,” that apparently seemed a just fate for a woman of her bad character who tainted her reputation in such a way.

But Maria was a bad character from the start, making Fanny’s life quite miserable. On the other hand, some twenty years later, *The Divorced* (1837) by Lady Charlotte Bury was published where the main character was a woman that ran away from her husband with his friend. The book begins years later with her married to her lover and they have to deal with how their past was to influence their children. On one hand, Lady Howard loved her children and her second husband very much and on the other, she had to live secluded from society, because of her elopement and divorce, while still feeling shame and remorse for her actions. Lady Bury lived at court so she knew the positions of the aristocratic society toward matters like these and by making them a part of her novels, she belonged to the silver-fork school of writers. While offering her readers a character that committed adultery and ran away with a lover, at the same time her heroine invokes pity rather than judgment. This shows how the views of the society slightly shifted from considering divorce abominable, to a slightly more sympathetic approach. This goes hand in hand with Stone’s claim that in between 1750 and

⁵³ Defoe, *Moll Flanders*, 77

1857 the function of divorce changed from protection of estates to pursuit of happiness of the spouses.

In opposition to classic novel stands social criticism that also made use of divorce, in order to point out the position of women under the rule of their husbands. In Imlay's *The Emigrants* (1793), the character of Lady B- served to illustrate the oppression of women, which was an important theme that the author shared with his lover and companion Mary Wollstonecraft. Lady B- was divorced by her husband through no fault of her own and although she and Mr. P. P-, who was considered her lover, tried to defend themselves from the wrongful accusations, there was nothing either of them could do, since, according to Imlay the system of the law preferred the rights of the man over the woman's and the truth.

4.2.6 Custody of children

The custody of the couple's children was often the sole reason for not obtaining any kind of separation. Up until 1857, the children were always put under the care of their father and it was his right to decide if he was to allow any interaction between them and their mother, "as with judicial separations, however badly a father might have behaved, after divorce he had a perfectly legal right in common law not only to keep all the children, however young, but also to cut their mother off from all access to or communication with them."⁵⁴ This was often used as a leverage to keep the wife in the marriage. Emily Nugent mentioned as one of the greatest injustices done to her, how her husband abducted their daughter Rosa and turned her against her mother, and they did not see each other until after Rosa's marriage.⁵⁵

⁵⁴ Stone, *Road to Divorce*, 340

⁵⁵ Nugent, 77-78

4.2.7 An Act to amend the Law relating to Divorce and Matrimonial Causes in England of 1857

The original bill for a change in divorce law was presented as a means to provide a possibility to obtain a divorce for people from all across the social spectrum. It was not true, since the costs still remained too high for anyone less propertied than the upper-middle class. But it did achieve a number of changes. It created the Court for Divorce and Matrimonial Causes, which took over the jurisdiction of the ecclesiastical courts in all suits regarding marriage. The problem was that this court resided in London, so in order to try for a divorce, the couple had to travel there, pay for accommodation and subsequently bring witnesses there and pay for them as well, which raised the price of the whole suit considerably and made it more inaccessible.

The Act also enabled a more equal access to divorce for men and women, although not completely equal yet. For the woman to apply, her husband must have been guilty of “incestuous Adultery, or of Bigamy with Adultery, or of Rape, or of Sodomy or Bestiality, or of Adultery coupled with such Cruelty as without Adultery would have entitled her to a Divorce *à Mensâ et Thoro* or of Adultery coupled with Desertion, without reasonable Excuse, for Two Years or upwards.”⁵⁶ The same rules applied also to the separation from bed and board. Following this Act, the action for criminal conversation that was previously settled by a common law court, was also dealt with in the Court for Divorce and Matrimonial Causes and the Damages did not go only to the husband, but based on the discretion of the court, they were divided in between the man, the wife and their children, for maintenance.⁵⁷

This Act of Parliament, despite being imperfect and put together under pressure during a very hot summer, withstood a surprisingly long period as the law of the land. The divorce law did not significantly change until a reform in 1937. The same divorce procedure was

⁵⁶ *An Act to amend the Law relating to Divorce and Matrimonial Causes in England*, 6

⁵⁷ *An Act to amend the Law relating to Divorce and Matrimonial Causes in England*, 1-8

followed even though the society was dramatically changing due to industrialization. In spite of the simplification of the procedure, the number of divorces remained constantly low until after the First World War, keeping only around 0.1 divorces per 1,000 married couples.⁵⁸ After the War, there was an attempt to reform the law to adjust it more to modern needs, which were demonstrated by the rising number of divorces (0.5 per 1,000 couples in the 1920's), but it remained the same until 1937.⁵⁹

⁵⁸ Stone, *Road to Divorce*, 385

⁵⁹ Stone, *Road to Divorce*, 395-398

5. Conclusion

Despite popular belief, women in the eighteenth- and nineteenth-century England had access to property, sometimes during the course of their whole life. The rights were often limited by birth, social and marital status and the people around the woman. Throughout her life a woman could obtain large property, lose it upon her marriage, regain it after her husband's death and eventually lose it again, in case she remarried. Owning anything, from money to estates, was largely connected to marriage and to the changing of marital and divorce law.

Unmarried women, when they reached adulthood, were independent and they could hold their property by themselves. Some chose to remain that way, but the character of a spinster was not a very popular notion among men, which is why the very appellation of a spinster gained a rather negative connotation. But the chaste and charitable maid, that used her property to help others, later became one of the ideals of proto-feminist groups, like the blue-stockings, that is why such characters can be found for example in Sarah Scott's *The Description of Millenium Hall* (1762). Of course, the position of a maid was largely dependent on the social position of her family. Girls from the laboring class often went to work as soon as possible to earn their living, whereas daughters of landowning families and heiresses to larger fortunes only waited to be married, most often according to the wish of their parents or guardians.

Characters of unmarried women create the majority of young heroines in novels of the eighteenth and nineteenth centuries. These heroines came from the whole social spectrum, though the dominant part was first from the gentry and then from the middle class. The eighteenth century saw a rise of a heroine from the middle class tempted by an evil aristocrat, whose virtue is ultimately rewarded by good marriage with improved said aristocrat or her

yielding to seduction was severely punished. Morality and virtue were indeed rewarded, just like in Richardson's *Pamela* (1740) by a privileged position in society, immorality led to death or social ostracisation.

After marriage, a wife became *feme-covert* and she ceased to exist in front of the law, since her legal identity was absorbed by her husband. But despite this rule, women, mostly from the upper classes, still had a chance to hold property, through a marriage settlement that was signed by the husband and trustees for the wife before their marriage. Aside from representing his wife in front of the law, the husband was also responsible for any debts she contracted and legal suits launched against her, in most cases. He could also use force and punish her any way he saw fit, especially if he decided to make her sign over any property settled on her for her separate use.

For most of the eighteenth century the characters of married women in fiction were usually mothers of the heroines, or the original characters of maids that found husbands and their story continued after marriage. Social critics like Mary Wollstonecraft used married women to illustrate the conditions wives were under and the injustices done to them by their husbands.

The eighteenth- and nineteenth-century England already knew two possible endings to a marriage, death of one of the spouses and divorce. Widows were usually quite esteemed in the society, if they adhered to set social norms. A widow was considered *feme-sole* and she was the sole possessor of any property that she inherited from her husband or that she earned by her work. If her husband had made a will before his death, she was dependent on what he decided to bequeath to her, as from the beginning of the eighteenth century, there was no legally given part of inheritance that the husband was supposed to give her. Without a will, the widow was given one third of her husband's property if they had children or all of it if he died without progeny.

There were two archetypes of the character of a widow in fiction that predate the period of interest of this thesis and that can be found also much later. The merry and virtuous widow represented two modes of behavior expected of a widowed woman. They differed in their approach to property as well as in their sexuality, which was one of the main concerns. It is interesting to note, that even though remarriage was probably the more economical version of the future of the widow, it is connected to the merry widow, that was most often immoral and wicked.

Although the possibility of a divorce was present already in the eighteenth century, it was not a very popular action to take. In most cases, a divorce meant complete desolation of the woman, both financially and socially. There was also the possibility to obtain a judicial separation from bed and board, but in that case the couple remained officially married and up until 1857, the woman remained under coverture, although in most instances she was able to act alone, based on the agreement with the husband or the decision of the judge.

Neither divorce, nor separation from bed and board, were popular topics in literature. Divorced women were associated with adultery and novelists made them into bad examples for their readers. Stone's case studies are concerned primarily with divorce, since the legal procedure was one of the few instances that could still show at least a hint of everyday life of a couple, however problematic it might be.

It is visible that the two sexes were far from equal in the eighteenth and nineteenth centuries. Not only when it came to rights to property, but the possibility to hold a public office or even to get an employment was rather uneven. It went hand in hand with the female ideal of the time that was a meek obedient wife that took care of the children and let all financial matters to her husband. This thesis attempted to cover the way the female rights to property changed over time, along with the evolving marital law and whether these changes had any impact on how the rights were viewed by writers of both fiction and non-fiction,

since the opinions of the public were often greatly influenced by the said writers. The authors cited in this thesis were predominantly female, as they often paid more attention to the realities of the laws concerning women. Some of them, like Mary Wollstonecraft, protested against the injustice of the English legal environment towards women, other merely stated it as a fact. But both these groups give the modern reader an interesting window into how the law worked three hundred years ago.

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