

CHAPTER ELEVEN

Adultery and Impotence as Literary Spectacle in the Divorce Debates and Tracts of the Long Eighteenth Century

by

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There were a number of high profile marriage separation cases in the late seventeenth century which began a process of catapulting the sex scandals of the rich and propertied into the public arena of eighteenth-century print culture. The first case really to capture public attention in print was that of John Manners, first Duke of Rutland, who attempted to dissolve his marriage after 1659 because of his wife's adultery. The parliamentary debates during the case were salacious in the extreme, causing huge excitement and gossip and much reflection on the legal possibilities that opened up for all men who found themselves without legitimate heirs to their estates. Divorce, as a term, entered the cultural lexicon, bringing with it social implications that went beyond the landed gentry and aristocracy, to embrace the trysts and complicated sexual liaisons of the mercantile classes. This essay will examine the origins and emergence of the crisis that engulfed the propertied classes from the late seventeenth century onwards through an analysis of the early legal debates about matrimonial separation and the later bawdy pamphlets and divorce tracts that detailed the promiscuity and debauchery of wealthy men and women and the impotence (both sexual and social) of men whose married lives, when represented as public spectacle, threatened to tear apart the certainties of polite masculinity.

In early modern England the term divorce (or divorcement) was a disputed one and the routes to marriage dissolution and separation crossed more than one legal jurisdiction. Most cases before the late seventeenth century were heard through the system of church law courts which were attached to all episcopal dioceses and included the consistory court of the

archiepiscopate of York and the two courts which convened in Doctors Commons in London, the consistory court of the Bishop of London and the other, the Court of Arches, or the appellate court presided over by the Archbishop of Canterbury. The consistory courts applied canon law to all marriage cases, resulting in two very different outcomes. The first allowed a marriage to be rendered invalid *post facto*. Such annulment of a marriage union, which was not a divorce in the modern understanding of the term, allowed for remarriage, though only of the innocent party. Termed *divortium a vinculo matrimonii*, a nullity was recognition that the holy bond of marriage could not exist, and it relied upon proofs of illegality of the marriage either at its origin (through consanguinity) or in its failure to become a full or consummated marriage (because of impotence). The church courts were reluctant to allow annulments, though cases of jactitation, by which a marriage contract could be repudiated, were further pursued by couples trying to dissolve marriages altogether.¹ Until 1857 the jurisdiction of canon law in nullity cases remained in place; only from that time were couples able to break the bonds of marriage and legally remarry. Until then, most couples, in cases that included adultery and domestic violence, went down the route of separation from bed and board, or *divortium a mensa et thoro*, which did not come with the right to remarry.²

The system was ambiguous and deeply flawed, stranding unhappy couples in dismal marriages in what Lawrence Stone once called “a non-separating and non-divorcing society.”³ Even in cases of serious domestic violence, women who sued for separation frequently found that their husbands’ accompanying adulterous behaviour was viewed with greater disapproval than the tendency towards emotional and physical abuse.⁴ However, it was also the case that while canon law was manifestly opposed to the acts of sinfulness that could destroy holy wedlock, the church had some difficulty in keeping control over the institution of marriage. Not until 1753 did Hardwick’s Marriage Act ensure that the only legal marriages were those which took place within a church after parish banns had been

called. Until then, there were opportunities for challenging the legal status of a marriage, not least because ratification simply relied upon exchanged vows *de praesenti*, plus consummation. The system was so fluid that, in fact, early-modern people found numerous routes to separation. They appealed through common law courts over alimony and property, and the indentures created as a consequence had their own power of law, especially when appeal was made to equity. Stone called this the “widely accepted system of barter.” Even victims of domestic abuse could appeal to the common law courts to have their husbands “bound over” to good behaviour. Tim Stretton speaks of the “devastating irony” that the church courts had sole jurisdiction over dissolving marriages, but it was the judges in the secular English law courts who invariably ended up listening to all of the evidence of private lives in disarray. The Court of Requests heard multiple cases which privately settled separations, sometimes without a legal separation *a mensa et thoro* being confirmed in the church courts first.⁵

One early case deeply challenged the church’s control. In 1551 William Parr, the Marquis of Northampton, had a double bill passed in parliament, dissolving his first marriage to Lady Anne Bouchier and legalizing a second union he had forged with Elizabeth Brooke in 1547. Canon law was bypassed by Northampton through a series of suits beginning with a bill in parliament in 1543 that prevented his first wife’s children by her lover inheriting any title or land brought into their marriage. Mary I overturned this parliamentary divorce in 1553, but it was ratified again by Elizabeth I in 1559, leaving behind an enduring model of divorce that was intertwined with state politics and that overturned canon law.⁶ The Northampton case raised the deeply contentious issue of whether it was the church or the secular authorities who had primary control over questions of sexual morality. However, in both popular print representations of broken marriages and the clerical texts that debated divorce until the late seventeenth century, adultery was linked firmly with sin – and its

consequences for the afterlife – and was, therefore, a matter for the church. Samuel Saxey's *A straunge and wonderfull example of the judgement of almighty God, shewed upon two adulterous persons in London* of 1583 was sensational, didactic, and typical of the popular literature about illicit sex in society. It took the providential line that God literally stretched his hand out towards those "amorous strumpets and whoorish bloudsuckers" who defiled the marriage bed. The man who featured in Saxey's pamphlet had beaten his wife and "put her away" in favour of another married woman. The result was that the adulterous pair were found locked in his chamber, burnt to the bone by a tiny, localised fire which the neighbours decided was caused by God's wrath. Their punishment was to be glued together for all eternity.⁷ There was little change in this popular print representation between about 1560 and the end of the civil war. Adulterous men were monsters, declared the author of one tract in 1641, able, by their very presence, to disrupt the imagination of "disrespected" wives who were rendered infertile by the dissolution of the marriage bond.⁸ Debates between clergymen, therefore, turned on whether or not legal marriages were automatically dissolved by adultery because adultery itself arguably destroyed the sexual union intended by God as actually constituting marriage.

The reformation of the English church intensified debate as casuists on both sides – Protestant and Catholic – defined their positions on marriage and its dissolution. John Rainolds' *A Defence of the Judgement of the Reformed Churches* of 1609 was specifically a disputation with Cardinal Bellarmine over when and how the dissolution of marriage might be lawful. Rainolds argued that "Adams seed" had got into the habit of discarding wives "uppon everie mislike & discontentment," but that remarriage after marriage dissolution, while lawful, was only so for men when their wives committed adultery.⁹ Theologians and lawyers alike were influenced by the idea that human legal systems should reflect the word of God and this led to legalistic and often highly semantic arguments deploying Biblical texts to

decide the matter. Matthew 19 was frequently invoked because of its discussion of the decision of Moses to allow the Jews to “put away” their wives in acts of “divorcement.” Both John Dove’s *Of Divorcement* (1601) and Edmund Bunny’s *Of Divorce for Adulterie* (1610) argued against dissolution followed by remarriage under any circumstance. Bunny’s case was that although the Bible offered clear evidence that “not only the common sort of them, but even the better also...[did] take others besides,” nevertheless, “they swarved [swerved] cleane from that pattern that God had given them.”¹⁰ Their case was that the original union of Adam and Eve was sacred, but the problem they faced was that Protestant removal of the sacramental status of marriage meant the onus was on them to find a way of re-sacralising the sexual union of marriage. Dove admitted that some Protestant writers were arguing – dangerously to his mind – that marriage after *divortium a vinculo matrimonii* was only logical because adultery broke “the knot of sacred wedlocke.”¹¹ He turned to Mathew 19:7 to argue that the instructions of Jesus to the Pharisees overrode those of Moses to forbid divorce according to God’s original law. He conceded that “whoredom” in wives was problematic, but he enjoined men to instruct adulterous wives to “sin no more.” Remarrying was a sin; it just happened to be greater if a man “put away” a chaste wife.¹²

The spiritual transformation of becoming “one flesh” had real meaning before the late seventeenth century. Impotence was a ground for nullity because God’s law came into force at the time of consummation. For this reason, when Frances Howard sought separation from her husband, Robert Devereux, Earl of Essex, in 1613, claiming his impotence, the church authorities equated the problem with her adultery standing in the way of God’s plan. Sensationalist tracts appeared accusing her of consulting a Dr. Forman “who was skill’d in the Magic Art” and who was willing to help her bewitch her husband into an impotent state by making a waxen image and thrusting a tree thorn into “the Privities of the said image.” She was accused of uniting “little pictures of brass and wax” which sent her lover, Robert

Carr, into a “mad rage of lust.” Her diabolism resulted in God’s fury at the disruption of His divine plan and she died, symbolically, from “a disease in those parts below the girdle.”¹³ Frances Howard’s fate exactly matched the contemporary medical opinion that conditions such as uterine cancer were diagnostic of whoredom. Jakob Rüff’s *The Expert Midwife* claimed that “a certain Harlot, having her body lasciviously abused of the Divell ... comming in the shape of a man” suffered a disease that caused “her secret members [to] fall out of her body.” “God, who is always just and righteous, permit[t]ed these things by his just judgement,” Rüff told his readers.¹⁴

The Frances Howard adultery case became one of the biggest court scandals of the early reign of James I. It was a fore-runner to the divorce scandals of the late seventeenth century and was recycled in the eighteenth century as a stock tale in the creation of the scandal literature that emerged at that time. Howard and Carr were accused of arranging the murder of Thomas Overbury, a client of the Earl of Essex who had attempted to alert him to the danger of the witchcraft of his wife. Anne Turner and Richard Weston were hanged for poisoning Overbury, but it was commonly believed that Frances Howard lay behind the plot, and lurid pamphlets such as *The Bloody Downfall of Adultery, Murder, Ambition* went through several reprints to reach a wide readership. *The Bloody Downfall* featured pictures of the penitent murderers on their knees in prayer before execution, and it described adultery as an odious sin that left the strumpet woman and arrogant man unable to “looke up towards Heaven to behold Gods just judgments.”¹⁵ In other words, this case of combined female adultery and male impotence was represented in print as an exciting, theatrical display of sin, played out against the intense debate which was taking place within the church about the legal and jurisdictional parameters of separation and divorce. Narrative meaning for the lay audience was provided by the concept of sin as defined by the church and, unwittingly, it was

these early clerical authors, such as Rainolds, Bunny, and Dove, who dragged the issue of extra-marital sex out of the setting of the church and into a vernacular setting.

One critical change by the mid seventeenth century was the co-option of divorce as a staple of multiple literary genres that lay outside the normative discussions of the church. Another was that women's adultery came to be linked with the perceived danger of female independence. Popular ballads aimed at men had long portrayed marriage as an unhappy yoke for their sex. Indeed, the many household government manuals, written by clergymen in the late sixteenth century and the first part of the seventeenth century, were an attempt by men to persuade other men of their duties as Christian husbands towards wives whose obedience could not always be taken for granted. However, the figure of the cuckold became a major trope in the bawdy literature of the civil wars of the 1640s; men were portrayed constantly as the hapless victims of secretly adulterous wives. The cultural purchase of the cuckolded man needs to be examined in tandem with the real phenomenon of female religious sectarian activity and an underground proto-feminism. The language of an altered femininity – one that scrutinized male demands in marriage – can be found in women's diaries and their poetry. Elizabeth Egerton's diary for the 1650s indicates quite dramatic gender change as women began to reflect more seriously on the possibility that marriage might be an onerous state for women. Although she recorded that "there is an obedience must belong from the wife to the husband," she also wrote that the state of marriage was arguably "an unhappy life." In this way, she pre-figured (privately) the arguments of Mary Astell's *Reflections upon Marriage* of 1700 and those of the acerbic writers of the *Athenian Mercury* in the early eighteenth century who offered advice to women on how to punish adulterous and cruel men.¹⁶

The utter moral panic about marriage during the civil war and commonwealth period indicates growing fear that the whole social order was about to come crashing down. The author of *Trust a Papist and Trust the Devil* of 1642, for example, equated women's

temptation by Catholics with fornication and adultery. The pretty maid who saw the meadow parted and “lets it drive with the streame” was a symbolic figure, one who revealed a deep social anxiety which could be transformed into a literary trend toward pornography. Through the sexual awakening of the maid, the reader could associate religious infidelity with sex and the moral breakdown of society as men wilfully overturned God’s plan for procreation.¹⁷

Work done recently by Sarah Toulalan and Jennifer Evans reveals the extent to which seventeenth-century people believed in a link between lust and reproduction.¹⁸ However, sinful lust could point to the reverse of fertility at times of turmoil. *Fruitfull England like to become a barren wilderness through the wickedness of the inhabitants* of 1648 equated the army’s rebellion against its parliamentary paymaster with moral (and, indeed, bodily) corruption and disease. No grapes could “be expected on thornes, nor figges on thistles,” the author told his readers.¹⁹ Political representation became inseparable from warnings issued about the collapse in marital morality. A brisk book trade was done in producing multiple editions, for example, of Bernadino Ochino’s *A Dialogue of Polygamy* and *A Dialogue of Divorce*, which together argued that children born to men outside wedlock “ought not to be Heires” and that, while it was lawful according to the word of Christ for divorce to follow the adultery of women (rightfully, a dissolution by God and not men), men’s adultery did not similarly invest in women the power of divorcing their husbands because “it is not necessary that Similitudes & Comparisons should in all points agree.” The double standard here operated because of the fear that men’s property rights in children were destroyed by female adultery.²⁰

However, it was attacks on church authority from those writers with the most knowledge of Biblical texts and law that made the lasting and damaging impact in the 1640s. Debates over the legalities and morality of divorce became colonized by secular writers who put together elaborate cases in favor of divorce in a complex discursive exchange between the

law and cultural representation. One such tract was the lawyer John Selden's *Uxor Hebraica* of 1646, which argued vigorously for remarriage after legal separation. Selden's work followed closely on the heels of the controversy caused by John Milton's *The Doctrine and Discipline of Divorce* of 1643 and *The Judgment of Martin Bucer* of 1644. Milton's own ill-advised and short-lived marriage to Mary Powell had prompted his reflection on whether or not simple irreconcilability between two people could constitute nullity of marriage. He used Martin Bucer to lend the authority of a Protestant reformer to his claims at a time when Protestant reform was high on the political agenda of the Westminster Assembly. Milton argued that it was "a special providence of God" that had brought Bucer to England while Edward VI was on the throne, so that Bucer could act as "a teacher of Israel" and interpret God's word on marriage dissolution for the newly Protestant state. The Northampton case lurked as a precedent in the background when Milton addressed the subject, though Milton's work was more polemical than rhetorical or legalistic in structure. So he argued, for example, that irreconcilable differences in marriage led to nullity even more demonstrably than male impotence. Impotence "interferes...only with the subordinate carnal end of marriage," he said, but at the time of Creation man and woman were brought together for "meet and happy conversation," which was the "primary end" of marriage. He had a point – it was not a linguistic accident that adultery was classified by the common law courts as one man's "criminal conversation" with another man's wife. According to Milton (and because it suited him to say this), carnal knowledge was only a secondary component of the very broadly-embracing spiritual state which came with holy wedlock.²¹

Milton was deeply at odds with Presbyterian and Independent ministers and *The Doctrine and Discipline of Divorce* was published by him without licence. It sold quickly and went into a second edition within a few months. Addressing his appeal to parliament, he was subjected to furious responses from puritan preachers, such as Joseph Caryl, whose pamphlet

An Answer to a Book, Intituled the Doctrine and Discipline of Divorce accused him of “sad breaches and dangerous abuses” of the marriage bond. Caryl re-stated the Biblical basis of canon law. He appealed to “Ladies and Gentlewomen, and all other Married Women,” but he was not interested in their physical security and financial welfare so much as the reassertion of the church’s control over marriage law at a time when anybody could argue the case from conscience that freed, for example, a dissenting Anabaptist woman from her Presbyterian husband. “Divorce,” he declared, “is a sentence pronounced by an Ecclesiastical Judge.”²² Milton’s reference to Bucer had represented a deliberate provocation of his opponents. He reversed old clerical arguments which stated that Moses was only speaking to a specific group of people when he allowed divorce, to argue instead that it was actually Christ’s prohibition of divorce that had been addressed to a select group only.²³ Milton’s was a “frothie discourse,” complained Caryl and, as far as he was concerned, Milton’s words were a dangerous nonsense that struck at the very “furrow of mans nativtie,” undermining the first end of marriage *viz* reproduction.²⁴

The 1650 *Act for suppressing the detestable sins of incest, adultery and fornication* introduced severe sentencing for adultery in what was, according to Keith Thomas, “the triumph of Puritanism.” However, the puritan response to the perceived erosion of morality ironically ended with legal power in divorce cases transferring further into the hands of the secular authorities.²⁵ A flurry of pamphlet literature in the early 1650s reflected the way in which this transfer of jurisdictional authority dramatically altered public discourse about sex and sin. In a jaunty dialogue between “Mistres Macquerella,” the “suburb bawd,” and “Ms Scolopendar,” the “noted curtezan,” these two fictional women complained “pitifully” about the new Act because it prevented their illicit sexual liaisons. More importantly, in the 1650s, a whole series of tracts that dealt with the story of Frances Howard’s attempt to poison her husband also came out in print. These works advertised themselves as “histories of Britain”

and they recycled for a new audience the Earl of Essex's impotence in precursors to the "legal histories" of divorce that became ubiquitous from 1700.²⁶ Thus, in a complex set of discursive changes, a new secularised discourse of divorce and sex scandal came to permeate the literary culture of England even *before* the arrival of the restored Stuart monarchy with its reputation for presiding over a bawdy court.

The potential for secularising divorce was not lost on social commentators, courtier-politicians or the educated public of the Restoration world, or indeed on the men who came forward between 1660 and 1700 to seek separations followed by remarriage. George Pressick begged for remarriage after a long separation that had been ratified by the London consistory courts. He said he wanted to "escape Satans snares, and have a remedy against my own Corruption." His plea entered the public domain in a tract which suggested that the seven-year rule laid down by the common law courts in cases of a person's disappearance should apply in cases like his when a wife had refused to return for seven years. Pressick played the Church at its own game by backing his "case of conscience" with sections from Matthew 19 and several other Biblical texts.²⁷ Art mimicked life as Restoration playwrights portrayed men (rather than women) desperately seeking separations from their (usually adulterous) wives.²⁸ Certainly there appeared to be greater female agency in extra-marital sex, seen most spectacularly with Charles II's mistresses. Jaunty and controversial broadsides warned men that wives had become so inclined to produce illegitimate children who they passed off as the "Dull Off-spring of the Marriage-Bed" that men were now "Cuckoldiz'd" rather than have "Soul, Body, Credit and Estate" ruined.²⁹ The case of Barbara Palmer, Countess of Castlemaine, whose adult life was defined by her multiple affairs, first as mistress of Philip Stanhope, the Earl of Chesterfield and then as the longstanding, wealthy and immensely powerful mistress of Charles II, resonated deeply in court circles. Several of her children belonged to Charles, but he did not acknowledge them all because she did not confine her

sexual activity to him, even, later, in 1705, hitching herself to an army captain ten years her junior who “did feloniously take [her]...to wife” in a bigamous marriage, exposing her to the scandal of love letters filled with obscenities being read out at the Old Bailey.³⁰

Perhaps, however, the greater anxiety for men was the spike upwards to twenty per cent in the late seventeenth century of marriages failing to produce any surviving children. Men themselves forced the issue of divorce because they wanted male heirs. The impact of childless marriage on male identity, when fatherhood formed a major component of masculine pride, was considerable, and consciousness of this crisis in male lines of inheritance led to a flurry of pro-nuptial and pro-natal tracts and an intensified sense of the importance to men of preserving both family name and estates.³¹ The increased use of strict settlements of land through use of male entail was one response to demographic crisis, but a deep level of interest in male fertility in marriage and the routes out of barren marriages (or those that failed to produce children whose legitimacy could be assured) was the other. The example of the childless marriage of Charles II and Catherine of Braganza troubled men and the royal couple came under constant pressure to reproduce and public scrutiny about their failure to do so. Some courtiers put their concern into turgid epithalamiums with stanzas like “And may this Month, great Sir, a Britains Heir | From your Imperial Loyns next year prepare | A Princely Pledge of your chast Consorts love | Another *CHARLES* to reign when you’re above...” Others wrote broadsides accusing Charles’s mistresses of destroying his physical health (and the Protestant religion) with their “foul nauseous and contagious Distempers” in a way that would ultimately destroy the health of the nation.³² Male fears of female agency in marriage failure became intense during the reigns of Charles II and James II. The example of the Duchess of Mazarin, who had fled from her abusive husband by escaping through a secret door in her French palace before coming to live in the court of the English queen in 1667, ignited gossip that continued for years and culminated in a set of memoirs that went through

two reprints in 1676. The Duchess claimed in print that her husband was inclined to play nasty, cruel, controlling little tricks on her, requiring her to “pass my best days in an unparalleled [unparalleled] slavery,” though it was also common knowledge that she accused him of impotence. Re-published in 1690, the memoirs were followed by her husband’s publication of his own defence in 1699 that she had “causelessly [sic] divorc’d her self” from him, prompting Mary Astell to write her *Reflections on Marriage* in 1700. In this work, of course, Astell famously said it was absurd that women volunteered themselves for a social contract that ensured their slavery.³³

In some ways, though, the most acute male attention was focused outside of court circles. The case that really transformed private sex scandals into literary spectacles for public consumption was that of John Manners, Lord Roos and first Duke of Rutland, as he tried to extricate himself from his marriage to Anne Pierrepont, the daughter and co-heir of Lord Dorchester. Married on 13 July 1658, Manners early fell out with Anne’s father with whom he conducted a very public duel in print through 1659. Much to the delight of their readers the two men accused one another of not being gentlemen, Dorchester calling Roos “a Tippl’d Fool...a Bragging Coward” and an “unmanly...Pultroon [poltroon].” Roos hit back, labelling his father-in-law a jester of all trades and master of none, a brutish man whose sword, he said, he did not fear (though this did not prevent him from going abroad for a year). Dorchester’s claim was that Roos’s attempt to take from Anne all her personal jewelery had brought about a scandal “cry’d by the common Cryer all *London* over.”³⁴ The scandal was to rumble on and on. Anne took a lover and the couple were legally separated through a church court writ in 1666. But the fact that she had had children while Roos was not even in the country meant that every man in wealthy circles knew that Roos’s heirs to his Belvoir estates were now the bastard children of his adulterous wife. Roos’s approach was the same as that of the Marquis of Northampton a century before – he introduced a parliamentary bill,

primarily to bastardize the illegitimate children. It went to the House of Lords on 12 January 1667 and then moved to the House of Commons, where it was passed on 29 January. He followed it in March 1670 with a bill to Parliament that would grant him the right to remarry, and this also was passed.

In other words, to gain a divorce John Manners bypassed the ecclesiastical courts and invoked the secular power of statute against canon law. Public purchase of the case was enormous. Anne Pierrepont was brought to answer her husband's libel in the Court of Arches and, for his part, Roos, on one occasion, was forced to slip out of the back door of the Dog Tavern in Palace Yard at Westminster to escape the misery of sitting with forty six other members of parliament while they chattered over dinner about whether or not they wanted to pass the bill that turned his children into bastards. Bishops in the House of Lords, along with some of their more uxorious fellow MPs, were appalled at the turn of events and, recognizing the attempt to break the power of the church over marriage law, they opposed the bill. However men's lines of loyalty were not straightforward; some bishops, for example, became renegades to the church, John Cosin, bishop of Durham, arguing publicly in print that Roos "would be in an uncertainty of the Children, if he should retain the Adulteress." The statutory precedent of Northampton and his Act of *Anno v Edward vi* was put into the public domain in print, while behind the closed doors of parliament MPs pushed for a change to the law, not least because it could prove a useful precedent for other men (including Charles II) wanting to escape marriages that did not produce an heir. All attempts to refer the matter back to Convocation for consideration by the church failed and opponents of the change were left with only the option of re-stating the old Biblical case against divorce, as Sir Charles Wolesley did in his *Case of Divorce and Remarriage* of 1673.³⁵

The legal change brought about by the unfortunate marriage of John Manners led to an immediate outburst of accusation versus counter-accusation in separation cases,

particularly as women began trying to protect themselves from being left penniless.

Adulterous sex necessarily lay at the heart of these accusations, but lurking too was the figure of the “impotent” man whose appearance in satires about the effects on men of drinking coffee, such as *The Maiden’s Complaint against Coffee* (1663), were just part of the wider cultural joke about weakened masculinity that formed the backdrop to the Manners case.

Indeed, for a few years, coffee became the shorthand reference or metonym for pathetic husbands, impotent men and weakened sperm. In *The Maidens Complaint Against Coffee or, the Coffee-House Discovered* (1663) “Mr Black-burnt” sold coffee to a collection of ne’er-do-wells including “Mr Suck-soul the Usurer” and his wife “Mistress Troublesome” who feared the effect of coffee on her husband’s sexual performance. Two “maids,” Jane and Dorothy, confirmed the awful verdict for manhood, Jane agreeing with her mistress, the usurer’s wife, that since the advent of coffee her lover (the tellingly named Snapshort) was “dry” and “that damn’d liquor will shorten his life and ability at least five in the fifteen.”

Dorothy agreed; since coffee came on the scene her Toby “is come to the same passe ... no more like the man he was then [than] an apple’s like an oyster.” The references to the fruits of land and sea were not accidental, but formed part of the elaborate and coded language for sex used across several literary forms throughout the long eighteenth century. In *The Maiden’s Complaint against Coffee* Toby confirmed his fate for the readers, relating that his last two efforts “to storm the Fortresse of our maide Joane ... were frustrated ... as if I had run my Head into a Kitching-stuff Tub.” He bemoaned the fact that in the past he had once “flung her on the bed, and gave her as good a meales meat as ever she eat since the prime of her understanding.” In *The Maiden’s Complaint against Coffee* Dorothy proves desperate at her “maid’s” plight, saying that before she would give herself to a “dry horson as drinks Coffee” she would “wrap my Maiden-head in my smock, and fling it into the Ocean to be bugger’d to death by young Lobsters.”³⁶

The joke about manhood and the devastating effect of drying liquors on marriage persisted into the 1670s when the “well-willing” author of *The Women’s Petition Against Coffee* (1674) told the audience that England, the “Paradise for Women,” no longer had men “who in former Ages were justly esteemed the Ablest Performers in Christendome.” “Never did Men wear greater beeches...[they are no longer] able to stand to it.” Husbands were turned into eunuchs the apparently female “petitioner” claimed, before cheerfully plagiarizing an earlier tract, *A Character of Coffee and Coffee Houses* (1661), to complain about men’s theft of women’s prerogative of “prattling.”³⁷ The writer of *The Character of a Coffee-House* (1673) went on to complain about “town wits” forming “law conventicles” and warned men that when they swallowed coffee “it scalds your throat as if you had swallowed the Gunpowder Treason.” Tory rants of this kind aimed at “whig” men were answered by “whig” rants at Tory men. For example, the author of *Character of a Jacobite* (1690) accused his opponents of harking back to “the late King’s Interest, as many men, when they grow Impotent, marry their Old Mistresses.”³⁸ Sexual libertinism was equated with loose words and seditious politics: “A Coffee-House is a Phanatique Theatre, a Hot-House to flux in for a clapt understanding, a sympathetical cure for the Gonorrhea of the Tongue, or a refin’d Bawdy-House, where Illegitimate Reports are got in close Adultery between Lying Lips [a reference to female genitalia] and Itching Ears.” The anonymous author of *An Amsterdamnable Coffee House* (1684) gave full vent to the idea that in the anti-monarchical political manoeuvres of exclusionist “whigs,” one found the “impotent” man.³⁹ As Judith Mueller has pointed out, “the label, impotent, relentlessly signifies beyond the un-performing organ to the entire man.” Such men were “non-men”, cuckolded and “insufficient”, the authors of their wives’ adulterous behaviour and the wreckage crew that threatened patriarchal descent.⁴⁰

The conjunction of sex and property in satires such as these was common and although the coffee-house tracts may seem like thinly-disguised pornography, Sarah Toulalan has rightly pointed out that both erotica and pornography are problematic categories from the late seventeenth century and coffee-house satires, medical texts, even travel writing, could contain sexually-voyeuristic imagery used to express social concerns about “fertility and reproduction and their social and economic consequences in terms of political stability and inheritance.” Anxieties about promiscuity in both sexes were inextricably linked to fears about infertility and its effects both on family property and lines of male inheritance.⁴¹ The women in the satirical *Maidens Complaint against Coffee* suggest that the inventor of coffee was probably some man trying to “replenish his crack’d estate,” the implication being that his own potency would seem the greater if he could produce impotence in other men.⁴² Thus, divorce debates and tracts shaded into and borrowed from other genres that also turned private sexual activity into a public spectacle. In this way, discussions about impotence took on a cultural relevance that went well beyond the medical realm. The author of *A Discourse of Natural and Moral Impotency* of 1671 produced a learned discourse that used the Gospel according to St John to draw a distinction between a natural impotence in men to do good (which, he said, “may be a punishment, but cannot be a sin”) and moral impotence that allowed men free will to change bad ways. The cultural purchase of this clerical text may partly be explained by the hegemonic discourse of male impotence that had so powerfully captured the public imagination.⁴³

By the late seventeenth century, then, cultural perceptions of gendered guilt and culpability in cases of adultery and marriage breakdown had shifted; a femininity of diminished sexual chastity was accompanied by a masculinity that took the blame for impotence and the failure to reproduce. Impotence became commonly explained as resulting from several forms of sexual over-indulgence including vigorous masturbation in youth and

an excess of extra-marital affairs in adulthood. *The Ladies Physical Directory* of 1727 advertised cures for male impotence while implying that this physical problem lying in the way of “propagating the species” was the fault of men themselves because male “insufficiency” through “badness of the blood, its sluggish circulation, or almost spiritless condition,” resulted from “inordinate coition” and “the ouzing or running of an impure matter of a yellow or greenish colour” brought about by “foul embraces.” A man could not gain or maintain an erection, the author warned, if the animal spirits did not flow “in such an abundance to the virile parts” after illicit sex. Marriage failure, then, might be because of female adultery, but equally it could be the fault of coffee-drinking, foolish men, some of whom waited till the “Meridian of their days” to attempt procreation when the damage to their bodies had already been done.⁴⁴ Men’s laughter at each other over damaging divorce cases turned into a form of gender suicide as they found themselves having to defend their bodies against ribald suggestions of sexual failure. For example, in 1697 John Butler insisted that he was not an adulterer even though his wife, Martha, accused him of being a “whoremaster,” a “fornicator” and a “heretic” for living with Mary Tomkins. He counter-attacked with the accusation that his wife had deserted him, adding that he could not be a whoremaster because “whoremasters expose their seed to be murdered in the body” and he was sure his manhood remained intact. His adulterous wife, he claimed, was the problem, the whore who produced the “bastard brood.” He refused to acknowledge the children for the purposes of inheritance, but not before rumours of his damaged “seed” had gone into print for all to read.⁴⁵

The “reformation of manners” which followed William III’s plea to the Bishop of London to introduce harsh punishment in cases of adultery, was as much a reaction to the public (and theatrical) nature of erupting sex scandals as the factual evidence of the broken marriages themselves.⁴⁶ The vast cultural consumption of sex scandals in the theatres of

London – through plays such as Aphra Behn’s *The Lucky Chance* and Thomas Southerne’s *The Fatal Marriage* (which was wonderfully subtitled “or, the innocent adultery”) – was quickly answered by the production of anti-theatrical works, of which Jeremy Collier’s *Short View of the Immorality and Profaneness of the English Stage* of 1698 was just one. Gellert Spenser Alleman’s analysis of the way in which the late Stuart stage borrowed directly from the evidence coming out of the endless business of the church courts indicates that mock and sham marriages appeared in 241 known stage productions between 1663 and 1714. Feminine connivance at the deception of men, and its consequences for masculinity, featured heavily and was reflected in ironic names given to men either married or about to be such as “Manly,” “Puny,” “Valentine,” “Lovewell,” “Drybob” and “Dapperwit.” “Sir Timothy Shallow,” in John Dryden’s *The Husband His Own Cuckold* of 1696, was typical of the man represented as emasculated by the sexual politics of marriage, having accidentally married the servant of the woman he had really intended to wed. To strengthen the insult, some of the characters were invented by the coterie of late Stuart women playwrights and surfaced particularly in the work of Susannah Centlivre.⁴⁷ The streets of London were awash in tracts which reacted, then, not only to an apparent degradation of marriage morality, but also to its cultural outlet on stage. *God’s Judgments against Whoring* (1697) and Mordecai Moxon’s *Manchester Daemoniack* (1703) riled against adultery, but the second of these played a devious game. Moxon claimed to be presenting a sermon against illicit sex, but his text featured the exciting antics of a draper and a shoemaker’s wife “playing at water-wag-taile”.

Two cases that ended in 1698 and 1700 finally allowed remarriage after separation, while effectively ensuring that the growing interest in private sex lives became a staple of the book trade. Both cases were driven by issues of property. In the Earl of Macclesfield’s divorce case of 1698 it was argued that he should not be “deprived of the common privilege of every Freeman of the world, to have an heir of his own body.” The scandalous details of

his wife's open relationship with Richard Savage, fourth Earl Rivers, with whom she lived and had children, were known to all. She openly petitioned against the separation in the ecclesiastical courts and in the end his separation was enacted in parliament first (creating a legal precedent), the reading of the bill becoming a spectator sport for other men including the Czar of Russia.⁴⁸ In the case of Henry Howard, Duke of Norfolk, it was argued that no one could object to the act of parliament that would allow him separation and remarriage from his adulterous wife because it was "not only for the benefit of the duke, but of the Publick, as a means to preserve the Inheritance." Again, church power was undermined, one tract actually arguing that "those Canons which govern the Spiritual Court in this matter, are but the Remains of Popery."⁴⁹ A flurry of traditionalist works came out arguing against statutory divorce in cases of adultery (and even against separation), but by 1739 the author of *Considerations upon the Institution of Marriage* could find that God does not judge men in divorce cases, but "[the] world does."⁵⁰ Moralists like Charles Gildon used the stage to promote the older morality – his play, *Phaeton: or, the Fatal Divorce* of 1698 appealing to men and women alike against divorce – but the audience found there was more fun to be had in the real-life dramas of the Duke and Duchess of Norfolk.

The Norfolk case was accompanied by petitions and appeals (published by both parties), trial transcripts and lengthy analyses of all the legal judgements in the case. All of the proceedings of the duke's case of criminal conversation brought against his wife's lover made their way into print. Advertisements appeared in public, such as the one declaring that on 15 April 1700 all "the proceedings upon the Bill of Divorce, between his Grace the Duke of Norfolk and the Lady Mordant; with the Depositions, and Pleadings, and all other Papers" would be printed on the order of the duke. The reading public waited eagerly and were not disappointed. *The Duke of Norfolk's Case* (1700) contained details of how the Duchess had been seen in bed with her lover, Sir John Germain, by assorted gentlefolk, female servants

and the footman alike. Mary Mordaunt rebuked her husband in print several times, for example, in *The Lady's Answer to a Divorce* (1700) in which she argued that “to an honest man a whorish woman is an intolerable plague,” but as both she and her husband were adulterers he could not really justify divorce. Such was his loss of reputation that when he sought damages against Germain for £10,000 for damage to his property/wife, he was granted just £66.⁵¹

Lawrence Stone once pointed out that the Norfolk divorce case not only shifted legal precedent (because there was no ecclesiastical separation) it also attracted such press interest that it led to “a shift of sensibilities ... away from regarding illicit sex as basically sinful and shameful to treating it as an interesting and amusing aspect of life.” An increase in divorce petitions after 1740 simply sharpened public interest and once trial judges ordered records of all cases be in the public domain, the reading audience for sex on display just grew and grew.⁵² In 1715 the case of the impotent Earl of Essex reappeared, yet again, but this time in a composite tract called *The Case of Impotency as Debated in England*. Claiming to be drawn from the manuscript trial account of Archbishop George Abbot, the tract laid out for its readers “the whole proceedings and debates on both sides” of the case. However, the interested reader was also treated to the sixteenth-century story of John Bury “who was divorced for his want of testicles.” The testimony of Bury’s wife informed one and all that he was impotent because he had “but one little stone and that no bigger than a bean.”⁵³ *The Case of Impotency as Debated in England* was one of the first major collections of cases to be brought together in a prurient, peep-show publication. The author-collator spoke of this “curious subject,” so turning the debate about the manhood of the Earl of Essex and John Bury into an exciting new narrative for an early eighteenth-century audience.⁵⁴ The author intended to collect a whole series of gossipy cases into one text. In a confiding tone at the beginning of the text he reminded the public that they had recently enjoyed the spectacle of

the humiliation of the Duke of Mazarin, whose wife had revealed to everyone that he had “organs of generation” of “requisite figure, size and dimension,” but that they were motionless, frigid and utterly useless.⁵⁵

Later in the eighteenth-century publications surrounding the divorce of Catherine and Edward Weld provided readers with reams of printed information on a case that conveniently featured both adultery and impotence. *The whole of the proceedings in the Arches Court of Canterbury* of 1732 collated the original libel papers brought to the consistory court by Catherine Weld against her husband for impotency, with his answer, and all attached medical examinations of both parties by surgeons and “Inspectresses,” and witness statements from family, friends, and servants. All the ingredients were in place for an audience of avid readers who were as much concerned to discuss the contested nature of the gendered physical body as they were to talk about sex. The fact that there was not any sex was as titillating as if there had been, not least because it signified a fall in symbolic status for the man.⁵⁶ The author offered his reflections on the law according to precedents set, for example arguing that impotence in men and sterility in women destroyed the purpose of marriage. He focused not on questions of God’s intention at Creation, but rather on marriage as an institution that relied on the conjunction of healthy bodies. Charles II, he told his readers, decided against dissolving his marriage to Catherine of Braganza because she had had one pregnancy, whereas the king had urged Lord Roos to pursue his case.⁵⁷ The Weld citation was for “insufficiency” and it outlined in formulaic style the facts that Catherine and Edward “lay both naked and alone in one bed as marry’d folks used,” but that after three years – “the length of years in which women are capable of bearing children with this space” – there had been no consummation of marriage forcing Catherine “to lay open to the publick view things which it is scarce decent for us to name.” But name them all the tract did anyway. Thus, the reader learnt that while midwives could not be certain about a woman’s virginity, surgeons

could always tell if a man “is now vigorous ... sufficient [the surgeon’s term] and in full health.” The spectacle of sex (or lack of it) in the Weld divorce tract reveals that the readers being catered to were interested in an assortment of information from analysis of the precedents in cases of impotence brought to court (from the real cases of male impediment to the cases of women’s disingenuousness in search of gain) to the salacious interest in the dysfunction of other people’s bodies. The author focused reader attention and blame on the male body and witchcraft no longer seemed as credible an explanation for what was wrong. Catherine Weld was described as a woman thwarted in her amorous love for her husband, a lady of “warm inclinations” who sought now to be released from the marriage bond that she might seek a man “of more vigour.” Indeed, Catherine had “offered herself and her body to be known, and earnestly sought and desired Conjunction and Copulation” with her husband. The problem did not lie with Catherine, but “the impediment” to which the author had cause to refer over and again. Catherine did not know at the time of the marriage of the “perpetual impediment ... [or] natural imperfection,” but after marriage she confided in her father that a surgeon had been brought in “for removing his [Edward’s] impediment.” Catherine was even in some danger because impotency would lead her “to great temptations to incontinency.” The importance of the Weld case was in its revelation that it could be impotent men who were to blame for female adultery, rather than any female inability to control their own sexual desires. Public attention was drawn wholesale to male culpability for failures of sex in marriage. Here the Mazarin case had been important for English law, the author said, because it had found that the secular authorities were compelled to intervene “in favour of which [party] is [physically] capable,” in this case the woman. In the Weld case, however, the court was not in a hurry to agree with public sentiment and, ultimately, accepted the evidence of Edward Weld and a surgeon that his “sufficiency” had been restored. Indeed, John Bury’s bean-sized testicle was cited in the argument against marriage dissolution in the Weld case

because this tiny testicle proved that no matter what the genital impediment, sometimes the male organs of generation turned out to be in working order regardless of all evidence to the contrary.⁵⁸

The degree to which the eighteenth-century divorce tracts came to form a unique literary genre is evident in the self-conscious literary borrowing that took place. The citation in the Weld case took exactly the same linguistic form as the much earlier case of Frances Howard and the Earl of Essex. The legal language of the seventeenth century was repeated almost *verbatim* in composite divorce tracts like *The Case of Insufficiency Discuss'd* of 1711 and the old canonical idioms became, therefore, highly familiar to the eighteenth-century audience. Frances Howard and her husband were described as “both naked and alone in the same bed, as married folks use.” Howard “again and again yealded herself wholly to his power” and she “earnestly sought and desired Conjunction and Copulation.” She had no “impediment,” but the Earl of Essex did, which prevented him from having “carnal copulation with his wife.” His impediment was “perpetual,” and “he was not able to penetrate into her Wombe or enjoye her.”⁵⁹ Thus, by the time readers got to the Weld case they had heard it all before. There was crossover also with medical discourse. Readers of *The whole of the proceedings ... between ... Catherine Weld ... and Edward Weld* would recognize from the author’s revelation that a surgeon “strengthened his [Edward’s] Member so as to render him fitter for generation” that this was a reference to the patent medicines, mechanical cures, and manipulations sold by the author of *The Ladies Physical Directory* of 1727.⁶⁰ Impotence as a cause of infertility in marriage had become such a major social concern that it had commercial value. Therefore, what was at issue in the Weld case was whether or not Edward suffered from insufficiency, which led to what *The Ladies Physical Directory* described as “a languid or faint capacity or Endeavour to Propagate the species,” or from “Absolute Impotency,” which “is manifest of itself and needs no description” and “seldomer happens.”

Only the latter could not be remedied, even by a physician's "Prolifick Elixir, Powerful Confect and Stimulating Balm."⁶¹ The court decided that Edward's was not an absolute impotency, suggesting that it was in the church courts that the most efforts were made to save male reputation at the same time as shoring up canon law. In *The Counsellor's Plea for the Divorce of Sir G D and Mrs F* of 1715 it was revealed that the church court refused separation to a couple because although the marriage had not been consummated the court was not convinced of the man's impotence and so it argued that only adultery could lead to dissolution.⁶²

The increase in court reporting in the eighteenth century, following on from the decision of judges to appoint trial reporters, generated an outpouring of trial news being sold by booksellers. The publications that then appeared reporting criminal conversation cases could be called a step in the "development of the genre towards pornography," as Peter Wagner has argued.⁶³ However, the tension always remained between the purposes of the church courts and the intentions of the trial reporters which lay in sympathy with the secular arm of the law and with the interest of the reading public. For commercial reasons publishers were interested in the unusual cases, or those which went beyond what was already reported in newspapers. The central issue under debate after the Norfolk case was no longer whether or not remarriage after dissolution was permissible but rather which of the two grounds for divorce – impotence or adultery – was the most legitimate and what the juicy facts were in each individual case. David Turner has noted this gradual change over the eighteenth century, from the shift of focus on discussions of canon law to prurient revelations about who was having sex with whom, and where.⁶⁴ In cultural representation, according to Sarah Lloyd, "where" was most often "in the shrubbery."⁶⁵ "The apogee" in the shift of divorce tracts towards erotica, Peter Wagner suggests, came with Francis Plowden's *Crim. Con. Biography*, a 1789 compilation of all "celebrated trials in the Ecclesiastical and Civil Courts for Adultery

and other Crimes connected with Incontinency, from the period of Henry VIII to the Present time.”⁶⁶ The secular representation was guaranteed as law reporting of criminal conversation cases came to dominate. Turner has argued that these tracts “owed more to other genres of scandalous prose fiction such as the ‘secret history’ and *roman à clef*” which were gaining readership in the eighteenth century, but, as has been shown here, they owed as much to earlier seventeenth century trial publications, even if the social concerns and audiences they addressed had changed.⁶⁷

The divorce tracts raised the visibility of adultery and generated debates about privacy and the sexual boundaries of the social elite. There was self-consciousness and something self-referential about this literary spectacle that can be found fully in evidence in some of the divorce tracts at the end of the eighteenth century. The compiler and reporter of trials in *The Cuckold's Chronicle* of 1793 told his readers that predecessor divorce tracts had confined themselves to dry reporting of depositions (he included the earlier cases of the Duke of Mazarin and John Bury) and that this rendered them boring and moralizing tales despite the naturally exciting information that could be revealed. By contrast, he promised “easy Narrative,” the removal of all dullness and “an inexhaustible fund of amusement” for readers of these cases which “mingled seriousness and absurdity, such criminal turpitude, and such ridiculous weakness, comprising scenes so wildly ridiculous, and so extravagantly absurd, as must arrest every attention, and furnish food for every disposition.” For those who still wished to ponder the cases with deeper levels of social and legal concern, he offered the occasional insertion of “lessons of morality.” However, the alphabetical contents pages of the first of his two volumes ensured that while the public could navigate directly to the deeply sobering trial of James Lavendar, who received the death sentence for raping a fourteen-year-old girl in 1793, they could also, if they so wished, turn straight to “copulation and congress,”

“erection prompt,” “frigidity,” “impotency,” “noise and shaking,” “strugglings,” and “virility.”⁶⁸

Thus the debates and tracts about divorce of the long eighteenth century formed a polymorphous and shifting genre that drifted in the interstices between factual trial reports and sensationalist and semi-fictionalised narratives about sex. Thinking broadly in terms of discursive change in the *longue durée* can be enlightening, revealing borrowings of exact terminology that became recycled with completely different intent by authors over time. The literary spectacle of the Catherine Weld case was described in *The Cuckold's Chronicle* as unreadable by some people, but, actually, most people – both men and women – proved very interested in reading about “the secrets of the Marriage-Bed” by the late eighteenth century. Privacy had come to hold no authority, and the morality of reading itself – *who* read and *what* they read – had changed as well. “Pieces of this cast may be written without offending the most exact decorum and consequently be read, without sullyng the chastest mind” declared the author of *The Cockold's Chronicle*.⁶⁹

The reading appetite for collections of divorce stories grew to such proportions that a ten volume set of them appeared, bringing all the main cases together in a personal library edition. While the rationale for such a set might appear to be to provide lawyers and litigants with precedents in divorce case law, in reality, this edition offered adult readers a collection of exciting stories about adulterous sex, about men who could not perform their sexual function, and about women whose reputations were easily undone. In real life, the hapless protagonists in divorce cases continued to fight over property both material (land and capital) and human (spouses and children). Men fought to ensure male succession to landed property and women fought to get back the cash that they had brought into marriages. The Duchess of Norfolk put up her enormous public struggle against marriage separation not to save her reputation but to retain her £10,000 portion. However, in the process of men's struggle to

obtain the right to divorce by statute and remarriage, they laid masculinity bare to the charge of social and sexual impotence. Therefore, if there is one overriding result that can be seen from the complex exchange between law and cultural representation in divorce from 1550 to 1800, it is the pyrrhic victory of men that undermined all claims to a polite masculinity.

DRAFT