

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

UMI[®]

A

**"Masculin Births":
The Re-Conception of Seventeenth-Century Law in Milton's
Poetry**

by

Lynne A. Greenberg

A dissertation submitted to the Graduate Faculty in English
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy, The City University of New York.

2001

UMI Number: 3008831

Copyright 2001 by
Greenberg, Lynne Ann

All rights reserved.

UMI[®]

UMI Microform 3008831

Copyright 2001 by Bell & Howell Information and Learning Company.

All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

Bell & Howell Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

Copyright

2001

LYNNE A. GREENBERG

All rights reserved

This manuscript has been read and accepted for the Graduate Faculty in English in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

19 April 2001
Date

Joseph M. Wittreich
Chair of Examining Committee

4.19/01
Date

Joan Kuhars
Executive Officer

Joseph M. Wittreich
Dr. Joseph Wittreich
Jacqueline Di Salvo
Dr. Jacqueline Di Salvo
Jon-Christian Suggs
Dr. Jon-Christian Suggs
Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

**"Masculin Births": The Re-Conception Of Seventeenth-Century
Law in Milton's Poetry**

by

Lynne A. Greenberg

Advisor: Professor Joseph Wittreich

Laws are Masculin Births ... nothing [is] more awry
from the Law of God and Nature, then that a Woman
should give Laws to Men.

Taken in isolation, John Milton's seemingly definitive pronouncement in The History of Britain suggests that he concurred in seventeenth-century English law's discriminations on the basis of gender, presupposing justifications both divine and natural for men's unilateral domination of the legal system. The common-law unequivocally favored the rights of men: "Women have no voice in Parliament, They make no Lawes, they consent to none ... All of them are understood either married or to be married and their desires ... subject to their husband, I know no remedy though some women can shift it well enough."

This study takes as its starting-place woman's potential to shift the legal system and interrogates

Milton's sliding scale of responses to such shifting women. This work will argue that Milton's thought in the area of gender relations is as revolutionary as his political thought, that, in fact, it engages in shifting maneuvers, subtly calling into question the framework, justification and immutability of the law. Interrogating women's limited legal status grafted onto Milton's poetry and enforced by English law, this work explores how Milton's poetry does not simply acquiesce in, but instead, subtly transgresses and even critiques these limitations. A chapter-by-chapter exploration of the different stages of a woman's life as represented in A Mask, Paradise Lost and Samson Agonistes permits an in-depth analysis of early modern constructions of female power and agency, revealing how Milton's gender discourse is as revolutionary as his political thought.

This book will also historicize Milton's work within the larger legal revolution of the period, interlacing Milton's prose and poetry with official legal literature, in order to reveal just how central changing legal definitions were to Milton's thought. What is most extraordinary about Milton's vision is how he managed not only to conceive of a society structured along modern contractarian, proprietary and individualistic principles but also to anticipate many of the implicit problems associated with a system under which we still live.

Acknowledgements

For Lilly and Benjamin

The subject of this book reflects a personal decision to leave the practice of law in order to pursue the field of literary study. I am thankful to those family members and friends who offered me support in what seemed at the time to be a questionable move. My adored mother and father, Jan and Ronald Greenberg, paragons of living a life devoted to the arts; generous and dear parents-in-law, Mike and Maria Avram; law school professor, William Landes; and best friends, sweet Susannah Blinkoff, Jillisa Brittan and Holly Peterson, deserve my gratitude for encouraging me to follow my heart and, in countless ways, for assisting me practically in making sure that I could.

The CUNY English Department has provided me a haven that has fostered my intellectual growth, inspired me and supported me, financially, emotionally and professionally. I am particularly indebted to Linda Sherwin, whose kindness is of the rarest sort; Joan Richardson, a true role model; Mary Ann Caws; Wayne Koestenbaum; Nancy Miller; Mark Dolin and Scott Westrem. I would separately like to thank Patrick

Cullen, who first offered me the opportunity to develop my expertise in legal history, and, thereafter, oversaw the fruits of this study with open-minded clarity, as well as constructive editing and comradeship. I have also benefited immeasurably from the scholarship and teaching of Jacqueline DiSalvo. She has been a warm and enthusiastic reader of this book—and managed to inspire an entire chapter in one typical conversation in which her imagination took flight and she made connections as no one else can! I also appreciate Jon-Christian Suggs's willingness to bring his expertise in the field of law and literature to this project.

I owe the most to Joseph Wittreich, my dissertation director. I am daily awed by him. His ambition for and rigorous expectations of me tempered by his sensitivity, kindness and humor made this book possible. He first encouraged me to think of Milton studies as my life work and, had it not been for his taking my ideas seriously, I would not have found my calling. He has been the best reader of my work and the most giving and devoted of mentors. He has also offered me a breadth of knowledge and invaluable professional advice and assistance way beyond what I could ever have imagined. I only hope that, with him

as the ideal, I will mature into half as fine a mentor to my students.

John H. Baker, Professor of Law at New York University Law School, also deserves special acknowledgement. Although he had no obligation to do so, he single-handedly took on the arduous task of turning me into a legal historian—allowing me to audit his legal history course at NYU; providing a much-needed legal history bibliography; sitting on my Orals Examination committee; and reviewing countless drafts on my legal introduction. His generosity of spirit is precious, and I humbly thank him.

I would also like to acknowledge the Folger Institute's Grant-In-Aid that allowed me to finish the research for this study. My additional thanks, in this context, to David Norbrook for posing questions in the Folger seminar that pushed my analyses in new directions. I am grateful as well to the many Miltonists who have welcomed me into their community and provided insightful criticism of my work, including John Rogers, John Shawcross, Charles Durham, Kristin Pruitt, Sharon Achinstein, John Leonard and Stella Revard.

Finally, my thanks to my siblings and community of friends who have supported me through every stage of this book. This work reflects a communal effort and would not

have been completed without the nurturing, encouragement, substantive suggestions and even technical assistance of my most beloved sisters, Jeanne (my paradise without) and Jackie Greenberg, figures of all that is beautiful on this earth; dear friends, Lisa (true soul-mate) and Richard Zabel, Mauro Premutico, Leslie Marshall, inspiring Peter Hedges, Donna Grosman, Johnny Shaman and Kate Silverstein; and extended family, Nick Rohatyn, Marc, Mathew, David, Kristy and Alison Avram and Rella and Joe Hartman. An additional thank you to my girl's night girls, Holly, Juju, Jody, Amy, Simone, Andrea and Dabber, who let me talk endlessly about what I love (even when they didn't understand a word!) and generally provided the hilarity and celebration that make life worth living.

My husband, Eric Avram, "Dearer thy self then all" and to whom I dedicate Book IV, lines 750-65 of Paradise Lost, really deserves the most credit. I thank him for teaching me what the Miltonic virtues of patience, uncompromising charity and "meet and fit conversation" truly mean. He has striven, as did Milton, to make his life a poem, and I have been so fortunate to share it with him.

My children, Benjamin and Lilly, to whom this book is dedicated, you are the world to me.

Table of Contents

Introduction	1
Chapter I: Overview of Seventeenth-Century English Laws Concerning Women	15
Chapter II: "To raze magical structures": The <i>Feme Sole</i> and Freedom	36
Chapter III: Relational Contracts in the Garden of Eden	72
Chapter IV: Paradise Enclosed and the <i>Feme Covert</i>	109
Chapter V: Dalila's "feminine assaults": The Gendering and Engendering of Crime in <u>Samson Agonistes</u>	147
Chapter VI: "a peal of words": Criminal Speech in <u>Samson Agonistes</u>	187
Epilogue: Milton's Women "At Their Own Lawe"	214
Works Cited	218

Introduction

Laws are Masculin Births ... nothing [is] more awry
from the Law of God and Nature, than that a Woman
should give Laws to Men.¹

Taken in isolation, John Milton's seemingly definitive pronouncement in The History of Britain suggests that he concurred in seventeenth-century English law's discriminations on the basis of gender, presupposing justifications, both divine and natural, for men's unilateral domination of the legal system. The common-law in the early modern period unequivocally favored the rights of men, circumscribing both the public and private positions of women at law. As the anonymous author of The lawes resolutions of womens rights; or the lawes provision for women, the first known treatise devoted to women's legal status, succinctly put it:

Women have no voice in Parliament, They make no

¹ Milton, The History of Britain in The Complete Prose Works of John Milton 1: 32. All references to Milton's prose are to this edition and are hereafter cited parenthetically in the text.

Lawes, they consent to none, they abrogate none. All of them are understood either married or to be married and their desires ... subject to their husband, I know no remedy though some women can shift it well enough (6).

Seventeenth-century law, then, altogether foreclosed women's participation in legal affairs, except in matters of culpability for which she was wholly accountable.

Nevertheless, The lawes resolutions did note the ability of the married woman, or *feme covert*, to "shift it," that is, to circumvent or manipulate the system to her own advantage. This study takes as its starting-place woman's potential to shift the legal system and interrogates Milton's sliding scale of responses to such shifting women. Choosing to foreground certain of Milton's more patriarchal, if not downright misogynist, statements, such as the one cited above, has traditionally led critics to adhere to reductive readings of his poetry.² This work, in turn, will challenge these readings, exposing how Milton's thought in the area of gender relations is as

² Gilbert and Gubar inaugurated the newest phase of this line of criticism, casting Milton as a patriarchal "bogey" (187-212).

revolutionary as his political thought; that, in fact, it engages in shifting maneuvers, subtly calling into question the framework, justification and immutability of the law. Interrogating women's limited legal status and access to the judicial process grafted onto Milton's poetry and enforced by English law, I will explore how Milton's poetry does not simply acquiesce in, but instead subtly transgresses and even critiques these limitations. Once erected, the carefully constructed gender prescriptions of seventeenth-century law begin to shift in Milton's poetry, the constructions ultimately toppling as surely as does the Philistine theater in Samson Agonistes.

Milton's work also bears the presence of specific legal constructions that correspond to those contemporaneously emerging in the seventeenth century as changed doctrine, laws or attitudes. The several "Copernican" revolutions of this age, political, scientific and religious in nature, have as their counterpart a legal revolution—one that brought about specific changes to individuals' relationships to their community and government.³ One can trace this revolution in many of the

³ For background on legal reform efforts during the civil war period, see Prall and Veall.

broad areas of legal doctrine, for example, contract, property and criminal law. Importantly, this revolution had a particular impact on women. It re-conceptualized the laws of marriage and property rights, yet left unchanged women's relationship to the public sphere. Milton stood at the center of many of these changes, and his prose interconnects explicitly with them. This larger legal revolution informs Milton's work in profound ways, as his poetry foreshadows and re-conceives of a new society structured along modern legal principles.

This interdisciplinary investigation requires engagement with legal categories as understood in the period. The historicizing of Milton's work with seventeenth-century legal discourse is an approach that has received little attention in Milton studies to date,⁴ unlike the larger field of early modern criticism that has persistently taken advantage of this approach.⁵ Several scholars have positioned Milton's work in

⁴ Three notable exceptions are Loewenstein, "The Revenge of the Saint" that analyzes Paradise Lost in the context of the Blasphemy Act; Hamilton that looks at Paradise Regained in the context of the Conventicles Act of 1664; and Knoppers, Historicizing Milton that looks at the crime and punishment of treason. In a more limited way, the works of Patterson and Barker also explore the legal issues of censorship and licensing in Milton's work.

⁵ Shakespeare studies alone has since the nineteenth century devoted a number of works to exploring the interconnections between his plays and Renaissance law.

relation to contemporaneous religious, political, cultural, economic, revolutionary and proto-feminist thought, bespeaking the importance of contextualizing his work within wider social, cultural and political frameworks. While historicizing Milton's work has led to progressively more nuanced readings of Milton's gender politics,⁶ the failure of these readings to focus on the legal constructions underpinning such societal constructions of gender leads to incomplete analyses. Milton scholars continuously clash over whether Milton's female constructions elevate or, instead, demean women without taking into account these characters' manipulations or capitulations in that framework most responsible for de-limiting their free will and agency. In response to Joseph Wittreich's call for a "revaluation" of Milton's poetry "in its historical moment,"⁷ I would urge that historicizing Milton's work in relation to

See, for example, Cushman Kellogg Davis; White; Ward; Kahn; Sokol; Phillips; Vickery and Clarkson.

⁶ See, for example, Wittreich, "'Inspir'd with Contradiction'"; McColley; Gallagher; Webber; Lewalski, "Milton on Women—Yet Once More"; and Woods. For readings of Paradise Lost that also situate the poem historically but lead to radically different readings, see Halley and Nyquist.

⁷ Joseph Wittreich, "'Inspir'd with Contradiction' 136, and Wittreich, "'John, John, I blush for thee!'" 47. See also Wittreich, "'He Ever Was A Dissenter.'"

seventeenth-century legal constructions is necessary in order to illumine Milton's vexed relationship to the dominant hegemony and to a legal system undergoing substantial change throughout the period. The relevant question, thus, becomes how free are Milton's women (or how many rights to do they possess) not in comparison to Milton's men, but, rather, in comparison to seventeenth-century women.⁸ Providing historical information that Miltonists have not considered, I hope to promote further examinations of Milton's legal vision, the results of which may well inform, modify, counteract or reinforce this study.

* * * * *

Legal scholars have long emphasized that law operates as ideology, producing and reproducing dominant social constructs (Rifkin; Kelley; Cover).⁹ As an authorized discourse of the state, legal definitions capture, perpetuate and enforce the social customs, beliefs, moral values and expectations of a given community and period.

⁸ This question alludes to the title of Woods' essay, "How Free Are Milton's Women?"

⁹ See also Klare 128 (law should be understood as praxis—that is, a form of "practice" through which the social order is defined).

Generally understood as representing the dominant hegemony, the law structures and de-limits a particular construct at the expense of others (Bottomley and Sullivan 12-15). Laws also function as instruments of the dominant class' official power and control, ensuring the perpetuation and maintenance of the hegemonic ideology through criminalization and punishment.

The dialectical relationship between law and literature has emerged in recent years as an important field of study, as scholars have increasingly sought to trace the convergence of these two powerful forms of social discourse. One of the Law and Literature movement's principal premises is that legal formulations provide both a source and analogue for literary constructions, and that a contextualized study of poetic representations and appropriations of legal discourse can "materially enhance" our understanding of a given culture (Dolin 8, 4). Robert M. Cover, analyzing the imbrication of poetic and legal ideology, observed: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for every decalogue a scripture" (4; Dolin 11). So, too, for every epic by Milton, there is a constitution, and it is the task of this book to expose these legal

constitutions.

Cover also argued that poetic, like legal, discourse engages in "world-making" (Cover 4, 9; Dolin 11), by encoding its society's values and ideals and, importantly, imagining alternative constructs. Employing Cover's methodology, other legal theorists have remarked that "fictional narrative functions in the public sphere, contesting or supporting the dominant legal ideology ... novels can represent legal and alternative world-views and ... the law itself can structure those literary representations" (Dolin 3). Milton's poetry, too, engages in such world-making and operates as the locus for vying legal and alternative world-views. Contextualizing Milton's poetry, then, is to insist upon its significance as social artifact, as a site of contested gender and legal discourse. His poetry mediates between visions of seventeenth-century normative values of gender relations and simultaneous re-conceptualizations of these values. Through his poetry, Milton conceived of a society structured along modern contractarian, proprietary and individualistic principles and, in so doing, offers us insights into the foundational expectations, principles and constructions upon which modern society stands. What is most extraordinary about Milton's vision is how he managed

not only to engage in Cover's process of world-making but also to anticipate many of the implicit problems, particularly for women, associated with a legal system under which we still live. Milton was uncannily prescient in mapping out the contours of a debate about patriarchal hierarchy and its limits that has persisted into the twenty-first century. Interpolating Milton's poetry with the criticism of twentieth-century legal theorists, such as Catherine A. MacKinnon and Carole Pateman, will further illustrate the contemporary relevance of Milton's poetry as a critique of both seventeenth-century and contemporary laws that unequally impacted, and continue to impact, women. In a period in which Milton's relationship to the "canon" is vulnerable, such contemporizing underscores the continuing viability and relevance of Milton studies.

My intention here is to interlace Milton's prose and poetry with official juridico-legal literature, such as statutes, court records and legal treatises, in order to exhibit their rhetorical and thematic similarities. This method will reveal just how central legal definitions, in defining men's relationship with God, each other, women and the land, were to Milton's thought. An intersection of Milton's high-culture work with unofficial legal discourse, the low-culture, popular literature of criminal biography,

broad­sides, domestic tragedy and petitions to Parliament, also permits the voices and experiences of Milton's female characters to resonate with their peers and allows for an investigation of how Milton's poetry intersected with the realities of women's relationship to a legal system conceived and controlled by men. Delineations of the dominant sex / gender ideology of the period will be made by reference to the conduct and instructional literature of the period, including marriage handbooks and manuals, practical guidebooks, sermons and homilies, that arguably recorded most didactically this ideology.¹⁰

* * * * * *

The anonymous legal treatise, The lawes resolutions of womens rights, will provide a conceptual frame for this exploration of Milton's engagement with the law. The treatise divides a woman's life into three stages—maidenhood, wifehood and widowhood. Each stage was dependent upon her private, particularly marital, relations with men and resulted in markedly different consequences to

¹⁰ For further background on this ideology as represented in conduct literature, see Klein; Davis; and Wayne, "Introduction," Tilney (1-93).

her private legal status. The first four volumes of the treatise explore each of these stages separately. The final volume of the treatise discusses women who had been victimized by particular criminal acts, for example, rape, and women who had themselves engaged in criminal acts thereby ousting them from this normalizing trajectory.

Milton seems to have agreed with the treatise's division of women's lives. In "An Epitaph on the Marchioness of Winchester," for example, Milton defines the Marchioness as "the honored wife of Winchester, / A viscount's daughter, an earl's heir."¹¹ In recognition of the centrality of the act of marriage to her legal position, then, this project will follow a similar format as The lawes resolutions, beginning with maidenhood in Milton's early work, A Mask, continuing with wifhood in Paradise Lost, then criminality in his final work, Samson Agonistes and briefly discussing widowhood in Paradise Regained.

A concise overview of seventeenth-century law will

¹¹ John Milton, "An Epitaph on the Marchioness of Winchester" (2-3), in The Complete Poetry of John Milton. All references to Milton's poetry are to this edition and are hereafter cited parenthetically in the text.

commence this project in the interest of facilitating a reading of the sometimes highly technical analyses in the longer chapters. This overview will summarize women's legal position, her rights, interests, immunities and liabilities, discussing separately the laws affecting the *feme sole*, or single woman, the *feme covert*, or married woman, and the widow. I will also draw out the distinction between women's relationship to public institutions responsible for enacting, enforcing and punishing the transgression of the law and to the private sphere of society as shaped by the law.

Chapter 2 will explore Milton's early creation in The Mask of an innately powerful *feme sole*, one whose power derives in many ways from her legal status. As a single woman, the Lady had access to legal rights and privileges commensurate with those of men. The masque explores this legal power and, in the decidedly ambivalent stance towards her relinquishment of these rights in the event of marriage, approaches a critique of seventeenth-century laws of coverture.

In the Garden of Eden of Paradise Lost, Milton idealizes a society grounded in modern legal principles. Chapter 3 will delineate one of the most important of these principles—that society should be based on consensual

relations. Contractarian principles underlie all of the principal relationships within the poem: between God and the Son, between God and Adam, between God and Eve and between Adam and Eve. The formation of these relationships relies upon the rhetoric of commercial contract and marriage law. By analyzing each of these relationships in light of the legal requirements for entering into a binding agreement, this chapter will argue that Eve's relationship to the contractual paradigm differs from that of Adam, recording women's problematic relationship to the laws of contract.

Chapter 4 will trace the privileging of enclosed spaces and of exclusive, private property ownership in Paradise Lost. While Adam comes to embody many of the attributes of the prototypical owner of enclosed land in the period, Eve bears more resemblance to the *feme covert* of seventeenth-century England with the decided difference that the poem endows her with more rights than did the common law of the period. By revealing the proprietary consequences of Eve's marriage to Adam, the poem continues Milton's subtle critique of women's relationship to the legal system.

Only the criminal woman in the early modern period managed to extricate herself from a life cycle dependent

upon her marital status. In his last dramatic poem, Samson Agonistes, Milton constructs such a criminal woman in the character of Dalila. Chapter 6 will explore the poem's confrontation with female criminality and Milton's surprising undercutting of Dalila's criminal status. Chapter 7 will continue this exploration, revealing how the poem re-configures Dalila from criminal defendant to wronged plaintiff. Final conclusions will meditate on widowhood and female independence.

A chapter-by-chapter exploration of each of the different stages of a woman's life as represented in Milton's major poetry permits an in-depth analysis of the poet's constructions of womanhood. His major poems grappled with the limits imposed by the legal system upon female independence and agency; and, while Milton may have insisted that England not turn into a place where "Woemen were Men and Men Woemen" (5: 79), he does engage in epic world-making that, ultimately, undermines seventeenth-century's gender constructs as encoded in and codified by the law.

I.

**Overview of Seventeenth-Century English Laws Concerning
Women**

Seventeenth-century English women legally stood, in the words of the author of The laws resolutions of womens rights, "strictly tied to mens establishments, little or nothing excused by ignorance" (2). By providing an overview of the laws that directly concerned women's lives during the seventeenth century and changes to the laws enacted during this period, this chapter reconstructs the legal status of early modern women in the hope that future historical studies of Milton's poetry may not stand in a position of ignorance vis-à-vis one of the most essential frameworks governing these women's lives.¹² This chapter should also facilitate a reading of the longer meditations to come in which Milton's poems are examined through the lens of seventeenth-century law.

Milton, himself, did not stand in a position of ignorance, but rather of particular knowledge of English

¹² For further background on women and early modern laws, see Cioni; Cleveland; Fitz; Glanz; Stretton; Eirckson; Gowing; Greenberg; Hogreve; and Staves.

law as it pertained to women. His protracted litigations in the Court of Chancery over debts owed by his mother-in-law Mary Powell and Lady Elizabeth Cope, in particular, indicate that he developed a special expertise in and intensely engaged himself with property law, coverture and inheritance law (French, chs. VII and X). He fought for years to avoid paying the widowed Mary Powell her dower and demanded a full accounting of the widow Lady Elizabeth Cope's inherited estate, arguing that she had undervalued it by manipulation and conversion. Milton's work as a scrivener and landlord also reflects his ongoing expertise in the laws of contract, property, debt and usury. As he met the legal requirements for validating his marriages under three separate systems and also explored the issues of marriage and divorce so thoroughly in his prose writings, it is clear that he also had an intimate knowledge of the laws of marriage formation and dissolution in the period. His in-depth poetic explorations of these legal constructs, as subsequent chapters will explore, in light of his daily incursions into the legal and judicial system, thus, seem perfectly natural.

Particular attention will be paid to the legal system's use of biblical exegesis to justify gender inequality. As Milton re-tells the story of Genesis, legal

commentators and justices were contemporaneously relying on this originary story to defend and rationalize as divinely decreed a legal system that denied women participation in law-making and equal access to many of the private legal rights taken for granted by men. The legal system's use of the story of Genesis, thus, further highlights the importance of applying Milton's poetry, particularly Paradise Lost, to legal constructs of the period, as both can mutually illumine and inform each other.

A.

The Public Position of Women at Law

Women ... have nothing to do in constituting Lawes, or consenting to them, in interpreting of Lawes or in hearing them interpreted at lectures, leets or charges (The lawes resolutions 2).

Regardless of her age or marital status, seventeenth-century English women found themselves barred from all direct involvement in the public institutions central to the legal structure of England. Denied an active role in the exercise of political authority, they could not sit in Parliament, act as counselors or government officials or

vote in parliamentary elections. They could not study the common law at the Inns of Court or the Civil law at the universities. They had no right to participate in the judicial process by serving as attorneys, judges or jurymen. Nor were they permitted, generally, to play an active role in the policing or enforcing of the criminal law at the local level. These disabilities persisted throughout the period in question, as no law reform touched any of these basic impediments to women's legal status.

The most significant exception to women's exclusion from public participation in government occurred at the highest level of government, in women's right of succession to the throne. Early in Mary I's reign, a parliamentary statute (1554) confirmed the "regal power" of a queen regnant, authorizing whatever "the King of this realm may or shall ... do anything as King ... the same the Queen ... may by the same authority and power likewise ... do" (Tanner 123-24). Technically, women could also serve certain limited, local functions in government and the church. Pearl Hogleve has documented a number of instances of women serving as churchwardens and overseers of the poor and a handful of examples of female constables and justices of the peace. She also found a scattered number of examples of women serving as sheriffs (responsible, among other things,

for sitting on the bench of the assizes). Most female sheriffs obtained this office by right of inheritance, as did Anne Clifford, Countess of Dorset, Pembroke and Montgomery, who served as sheriff of Westmoreland from 1650-1675.

The definition of political involvement has received some revision by historians, who have broadened its meaning to encompass a range of activities impacting the public sphere, including "dispensing patronage, influencing decisions and elections, petitioning, entertaining, haranguing, reporting seditious conduct, writing and disseminating ideas in printed form."¹³ Particularly in the period from 1640 to the mid-eighteenth century, women actively participated in such political action. Women also had great influence in the private sphere, thereby indirectly promoting public action through their relationships and kinship networks.¹⁴ Generally, however, one must characterize early modern women's direct participation in the public governmental sphere as limited.

¹³ Schwoerer 57-8. For further scholarship on women's political engagement, see citations in Schwoerer fn. 3.

¹⁴ Harris 259-81; Ezell ch.1; Wiesner; and von den Steinen.

B.

The Feme Sole

The law treated the adult *feme sole*, or single woman, as comparable to the adult male for purposes of private law, except in the area of inheritance that generally favored males (Baker, An Introduction 530). The laws of succession permitted the *feme sole* to receive gifts or legacies of personal property, including money, clothing, furniture, household goods, debts and the like. Land ownership, however, was arranged on patriarchal expectations, thus, *femes sole* inherited real property (interests in land) only under certain circumstances. Freehold property (land held for life or for uncertain duration, as opposed to land held in leasehold, for a set number of years) tended to descend in the male line due to the common law rule of primogeniture that preferred males to females of the same degree. Specifically, the system of primogeniture dictated that in the absence of a will to the contrary, the eldest son inherited all of his deceased father's freehold property. Thus, the common law always preferred a brother as heir to his sisters, even if they were older than he. Primogeniture did not, however, wholly bar female inheritance. If there were no sons to inherit,

then the daughters inherited freehold property equally.

While primogeniture governed the succession of freehold property, manorial custom governed the succession of copyhold property (land held at the will of the lord of the manor and according to the manor's customs) in the absence of a will. Customs varied in the different boroughs of England—some followed the system of primogeniture, some ultimogeniture (inheritance by the last born child), some divided the land jointly among the sons and in rare instances, some even allowed all of the children to inherit jointly.

One could avoid these forced laws of succession simply by creating a will, thereby permitting a man to disinherit any or all of his children, unless the property at issue had been entailed (a specification that land must pass to a certain line of heirs) or was held in military tenure. The freedom to draft wills contrary to the forced laws of succession could lead to the avoidance of primogeniture in favor of a younger son, a daughter or even daughters. Yet, such freedom could also lead to the disinheritance of daughters—in the face of only female, not male, children, a father could (and often did) will his property to a brother or nephew in order to preserve the male line of property succession.

The rule of "reasonable parts," or "thirds," governed the distribution of the deceased father's personal property; it provided that children would receive two-thirds of the property, if the man died intestate (without a valid will). The ecclesiastical courts had discretion to award even higher percentages and to divide the property between the children in any manner. A study of the records of the ecclesiastical courts reveals that, before 1670, the courts were generous in their division of such property, often allocating even higher percentages than that required by law to children and distributing the property equally amongst the children, regardless of their sex (Erickson ch.9).

The *feme sole*, thus, had the potential to own and control both real and personal property. She also attained other private legal rights comparable to those held by men. She could sue or be sued by third parties in her own name and plead in person. She could also enter freely into contractual relations with third parties. The legal system treated her as both fully capable and fully accountable, a subject with independent agency. The *feme sole* retained these rights as long as she remained a maid. Yet, her legal identity underwent radical alteration upon her marriage.

C.

The Feme Covert

Now that I have brought up a Woman ... me thinks she should long to be married (The lawes resolutions 51).

The moment a marriage became legally binding during the early modern period, the woman found herself radically transformed by the common law doctrine known as "coverture." A legal fiction, coverture applied throughout the early modern period. The principal source and justification for coverture derived from the scriptural understanding of a man and wife as *una caro*.¹⁵ As explained by the nineteenth-century legal historian W. S. Holdsworth, the married woman's legal position with respect to her husband "[u]p to comparatively recent times, and especially during the Middle Ages, [was] coloured by the canonist's

¹⁵ Legal historians have also offered various practical, technical, economic, sociological and historical explanations for the married woman's position at common law, while generally agreeing that the ideological and canonical interpretations of *una caro* played a significant role in the development of the doctrine of coverture. For brief overviews of these alternative explanations, see O'Donovan, Sexual Divisions 35-38.

conception of marriage as a sacrament which makes the husband and wife one flesh, and gives the husband dominion over the wife" (521). While canonists debated the extent of men's domination over women,¹⁶ legal commentators appropriated this "divine" inequality with unqualified ease to set the perimeters of the legal relationship between husbands and wives. "God has divided reasonable creatures into two sexes ... The male is superior, the female inferior" (Quoted in Spring 282).¹⁷ Therefore, the wife, "by the Law of GOD and of the Land, is put under the Power of the Husband, and is bound to live in Subjection to him" (A Treatise of feme coverts 180).

The exegesis of Genesis provided the most conspicuous biblical rationale for a woman's subordination. Eve's responsibility for the fall provided unassailable authority

¹⁶ For a helpful distillation of the exegesis of *una caro*, see Turner, One Flesh. While providing a thorough account of the history of sexual relations and the canonical debates embedded within the meaning of this phrase, he does not touch on its legal meaning.

¹⁷ See also Mossman 541 (arguing that legal opinions reflect prevailing cultural and religious views, thus, "even when women and men were regarded as equal in the eyes of God [in the ideas of reformers such as Calvin, for example], women were still treated as subordinate to men"). Such inferiority, justices also understood, as being a consequence of the fall.

for her present condition. As one seventeenth-century legal treatise, explained:

Eve because she had helped to seduce her husband hath inflicted on her an especiall bane. In sorrow shalt thou bring forth thy children, thy desires shall be subject to thy husband, and he shall rule over thee. See here the reason ... that women have no voice in Parliament ... The common Law here shaketh hand with Divinity" (The lawes resolutions 6).

The story of Genesis by the judicial system, therefore, received a particularly Pauline canonical interpretation to justify legal inequality.

The eighteenth-century legal commentator, William Blackstone, in his famous explication of coverture, delineated its practical effects as follows:

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: under

whose wing, protection and cover she performs everything; and is therefore called in our law French a *feme covert*; is said to be *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture* (I: 430).

The lawes resolutions described the particular power relations underlying the descriptions "*baron*" and "*feme covert*" as follows:

When a small brooke or little river incorporateth with Rhodanus, Humber, or the Thames, the poore Rivolet loseth her name, it is carried and recarried with the new associate, it beareth no sway, it possesseth nothing during coverture. A woman as soone as she is married is called covert ... that is, vailed, as it were, clouded and overshadowed...she hath host her streame ... her new selfe is her superior, her companion, her master (124-25).

The consolidation of the women's legal identity into

that of the husband led to her placement in the same legal category under the common law as wards, lunatics, criminals and idiots. Legal historians are in some disagreement as to whether this legal classification and the consequences of coverture technically constructed *femes covert* as chattels, that is, property.¹⁸ One informal customary practice used from the early modern period to the late nineteenth century does indicate that in some circumstances women were treated literally as property. Known as a "wife sale"¹⁹ the husband could formally sell his wife for money through a cattle dealer to another man, publicly ending the first marriage and thereby circumventing the law's refusal to recognize divorce. As described in an eighteenth-century legal treatise: "if the man had a mind to authenticate the intended legal separation by making it a matter of public notoriety, thinking with Petruchio, that his wife is his goods and chattels, he puts a halter around her neck, and thereby leads her to the next market place, and there puts her up for auction as though she was a brood-mare or milch-

¹⁸ For helpful summaries of this debate, see Greenberg 172, notes 1 and 2; and Dickenson 2-3.

¹⁹ For background on the history of this practice, see Menefee.

cow."²⁰ The earliest such "sale" actually took the form of a gift, for no pecuniary reward (O'Donovan 50-52).

Regardless of whether coverture led to the *feme covert's* status as mere chattel, it certainly led to the suspension of legal rights or "civil death" (O'Donovan 31) of the woman during her married state. Practically, it led to the automatic relinquishment of nearly all of her private rights. The economic consequences of coverture, in particular, were grave. The *feme covert* could no longer own property in her own name, nor could she accept grants, even from her husband or legacies. All of her real and personal property became subject to the control of her husband, if not explicitly reserved for her "sole and separate estate." Her leasehold property (land held for a fixed term of years) became the husband's property outright during the marriage, freely disposable by the husband during his lifetime. Any personal property owned by a woman at the time of her marriage also became her husband's property outright, as did any personal property given to a wife after her marriage. Even ownership of her paraphernalia (her clothing, jewelry, linens and plate) became her

²⁰ The Laws Respecting Women (London, 1777), quoted in O'Donovan, Sexual Divisions 51.

husband's during his lifetime. If the *feme covert* managed by her thrift to save a little of the money allotted to her for household use, then this money immediately became her husband's property.

Legal commentators justified these property disablements by arguing that

[i]n the contemplation of our law, the wife is scarcely considered to have a separate existence ... It is for [this] same reason, namely the unity of the persons of husband and wife, that the property is placed under the control and management of one of them; and the law has selected the husband as being more worthy of this trust. 'The husband is the head of the wife, and therefore all that she hath belongs to him' (Clancy 1-2).²¹

²¹ For an American judge's embrace of biblical exegesis to justify women's legal subordination, see Bradwell v. The State, 83 U.S. 130, 142 (U.S. Supreme Court, 1872) ("The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood ... The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things").

The *feme covert*, having lost her independent agency, was also denied the right to enter into legally binding contracts. Again, justices relied on the fall as a rationale for restricting women's access to contractual relations. As Justice Hyde in the case of Manby v. Scott commented: "Presently after the Fall, the Judgment of GOD upon Woman was, *Thy Desire shall be to thy Husband, for thy Will shall be subject to thy Husband, and he shall Rule over Thee*. 3 Gen.16. Hereupon ... she is disabled to make any Grant, Contract or Bargain, without the Allowance or Consent of her Husband" (A Treatise of feme coverts 179). The common law did recognize her implied agency to order household necessities on credit, such as food, supplies and clothing, from merchants with the proviso that the husband had either given prior authority for or later ratified this act. This implied agency rested on the notion that the husband had a duty to sustain his wife during marriage.

If the *feme covert* acted in the capacity of an executor or administrator on behalf of another party, then she could sue or be sued. But, a *feme covert* could not sue or be sued in the common law courts in her own right, unless her husband was joined as a party to the action. Thus, if the *feme covert* suffered some harm, whether bodily

or economic, she could not bring an action to recover damages without obtaining her husband's consent and naming him as a party to the action. The husband was even entitled to file a separate cause of action in his own name against the defendant, if the injury deprived him of his wife's "help or companionship." Any damages recovered against a third party automatically became the husband's property. Similarly, if the wife injured a third party, then the husband found himself personally liable for any damages sustained by the third party.

The leniency of the courts of equity, ecclesiastical courts and manorial courts tempered somewhat the more draconian consequences of common law coverture, permitting *femes covert* to sue and be sued in their own name in a wide range of circumstances. One cannot over-emphasize the importance of this circumvention of the common law's disablement of the *feme covert*, as recent scholarship has shown that women, even *femes covert*, had a considerable presence in these courts, "waging law" to define, create and protect their rights.²² Certain actions brought in the ecclesiastical courts, such as slander and defamation cases, were dominated by the presence of women, who

²² See Stretton.

represented the majority of plaintiffs, defendants and witnesses.

The notion of the *feme covert* as covered by her husband was taken to its logical extreme in exempting the *feme covert* from criminal liability for acts done in her husband's presence or by his order. The law inferred that, because she was so naturally dominated (or coerced) by her husband, she had no independent agency to refuse to act, even if unlawfully. The only exceptions to this principle were in certain felony cases, such as treason and murder.

D.

The Widow

The death of a husband propelled the *feme covert* back to the status of a *feme sole*, whereby she regained all of the private legal rights and liabilities lost upon her marriage. She frequently found herself in a new position of public responsibility, often named in her husband's will as the executrix of her husband's estate and guardian of her children during their minority. If a man died intestate, then the widow had the legal right to administer his estate. These new responsibilities thrust her into a more public legal position, requiring her to appear before the

probate side of the ecclesiastical courts to present and even prove and contest wills and to exhibit inventories and file accounts detailing her actions a year later. She also found herself paying legacies and portions, collecting and discharging debts and litigating in the courts to enforce marriage settlements or to secure her inheritance.

The laws of inheritance and succession provided the widow with certain carefully delineated rights to her deceased husband's personal and real property. The right known as "dower" entitled the widow to a life estate in one-third of all his freehold property held at any time during the marriage (unlike her husband's "curtesy" right that entitled him to a life estate in all of her property). Upon her death, the property passed to the heir named in the husband's will. Dower rights were absolute, superseding any will of the husband that sought to limit or deprive his widow of this right. Neither adulterous nor divorced women had dower rights. Only a pre-arranged settlement called a "jointure" could bar the widow's recovery of her dower rights. Jointures generally took the form of cash annuities, rather than life interests in real property. Jointures stayed in force either for the life of the widow or for the potentially more limited period of her widowhood.

Local custom usually provided the widow with her right to "freebench," also known as "widow's bench." Freebench entitled the widow to the profits of a percentage of her deceased husband's copyhold property. This percentage varied according to the custom of the manor from one-third to all of the deceased husband's copyhold property. Custom also determined whether such a right lasted for her lifetime, during her widowhood, or for an even shorter period, such as during the heir's minority.

Upon her husband's death, the widow regained her rights in and title to most of the property she had brought into the marriage. She could recover any previously owned freehold or copyhold property. Likewise, any of the *feme covert's* leasehold property that remained intact at the time of her husband's death once again became the woman's property. She permanently lost title to her personal property after the marriage and so could not recover it upon her husband's death with the exception of her paraphernalia that once again became her own. However, should a conflict arise between the widow and another legatee or a creditor, the law permitted her to recover only such paraphernalia deemed "reasonable" to her station. The rest of her jewelry and clothing would be granted to the legatee or sold to pay off the creditor.

* * * * *

The preceding overview has mapped out the contours of the most significant laws governing women's public and private relationships in seventeenth-century England. It has only hinted at the direct and indirect effects of these laws on women's lives; how, in fact, women actually fared individually and as a group under this legal system. Such an overview can present only an incomplete picture of the ways in which women found themselves victimized by coverture or, alternatively, directly ignored the strictures of coverture, by owning property, managing money and forming contracts, or indirectly evaded the property disablements of the common law by resort to the ecclesiastical, manorial and equity courts and by reliance on jointures, marriage settlements and trusts.

II.

"To raze magical structures": The *Feme Sole* and Freedom

How odious and abominable are those superstitious and rash vows of Popish monasteries, so to bind and enforce men and women to vow virginity to lead a single life against the laws of Nature, opposite to religion, policy, and humanity ... to debar them of that to which, by their innate temperature, they are so furiously inclined ... what fearful maladies, feral diseases, gross inconveniences come to both sexes by this enforced temperance (Burton 356-57).

In Book I of The lawes resolutions, the author painstakingly documents the enormous freedom held by the unmarried woman, or *feme sole*, at law. Yet, upon doing so, the author writes: "I did not meane when I begun, to produce any Vestall Virgin, Nunne, or new Saint Bridget" (51). This statement unabashedly projects the prevailing seventeenth-century sentiment that women should not perpetually remain free but, instead, should marry. Milton's A Mask subtly grapples with this sentiment, as the

poem produces just such a "Vestall Virgin" of which the legal treatise complained. The Lady's power, arguably, derives specifically from her legal status as a *feme sole*. This chapter will explore the poem's celebration of the Lady's legal power, the consequent "freedom of [her] minde" (663) unleashed by her access to legal rights and the poem's decidedly equivocal stance towards her relinquishment of these rights in the event of marriage.

A Mask, more than any other work by Milton, has been the subject of detailed historical analyses. Leah Marcus, Nancy Weitz Miller and Barbara Breasted, in particular, have sought to re-connect the masque to the life and work of the poem's patron, John Egerton, the Earl of Bridgewater, and to the governmental and judicial structure of the masque's locale in Wales.²³ By so situating Milton's masque, recent scholarship affirms the importance of historicizing a work that generically presupposes a close relationship between the fictive and the real. While not disputing the relevance of these readings of the work, this chapter seeks to re-position the focus of historical inquiries. I would urge greater emphasis, not on the

²³ See also "Comus: Contexts," an issue of Milton Quarterly 21.4 (1987) devoted to exploring the various contexts, social, political, domestic and topical, of the masque.

patron, but on the subjects of the masque. As A Mask concerns the plight of the Lady and her brothers, attention should be given to these individuals in their own right. Biographical information about the real lady behind the Lady, in particular, may well lead to a more historically grounded analysis of the masque's articulation of gender constructs. Likewise, the masque's construction of the relationship of the Egerton children to their father is perhaps more complicated than simply their "reflecting their parents" (Brown 6) or a "cultured offering of three children to their parents (Brown 35); as the children's legal position in the matrimonial and inheritance structure of the Egerton family endowed them with more authority and agency than has previously been noted.

Further, both Marcus and Breasted view Comus' threat to the Lady as sexual in nature and, accordingly, look to the Egerton family's real entanglements in the crime of rape to contextualize the masque. The sex scandal of their close family relative, the Earl of Castlehaven, and John Egerton's handling of the rape case of Margery Evans, thus, provide the basis for readings that speculate that the masque serves, alternatively, as a "ritual purification of the entire family" (Breasted 211) or a cautionary corrective to audience members handling criminal matters

(Marcus). Yet, neither scholar attempts to investigate how the legal system actually defined or perceived the crime of rape in the period. Such an investigation, as the chapter will demonstrate, leads to a very different understanding of the threat posed by Comus.²⁴

A.

The Lady in A Mask was written for the fifteen-year-old Lady Alice Egerton in part to present or "display" her at court (Wilding 49). The only unmarried daughter of John Egerton, the Earl of Bridgewater, and his wife, Frances, the Countess of Bridgewater, Lady Alice had seven older, married sisters and two younger brothers, both of whom

²⁴ Arguably, the focus on rape as the abduction of an heiress rather than rape as sexual intercourse undermines the relevancy of the rape to the masque at all. For a critique of the tenuousness of Marcus' evidence linking the Evans rape case to A Mask, see Kerrigan, "The Politically Correct Comus" 150 ("All one need do, it would seem, is place some facts or topicalities somewhere in the vicinity of a literary work, suggest a connection or two, and move on to the next case: one of the well-known prejudices at the heart of new historicism is its assumption that the power of fact over fiction, event over symbol, goes without saying.") In a paper presented at The Folger Institute's "Comus: A Workshop," Cynthia Herrup also noted that John Egerton's ties to the Evans' rape case are "conjectural" and that, as we do not know how the case ended, it is impossible to so celebrate Egerton's handling of it (March 24, 2001).

performed in the masque: John, eleven, and Thomas, nine. The ages of the three actors in A Mask have particular relevance from a legal perspective. Until the age of twelve, girls were deemed minors. Boys had a different legal age of majority, not deemed adult until fourteen. Lady Alice's brothers, then, were minors at the time of the masque's performance, not entitled to any of the legal privileges that inured to adult men—a point emphasized by the Lady, as she describes them as having “unrazor'd lips” (290). The Lady, on the other hand, had attained an age that entitled her to consent or disagree to marriage, choose her guardian and, upon certain conditions, make a testament of her proprietary estate (The lawes resolutions 7; Blackstone I: 451). Her brothers, therefore, owed a legal duty to their parents, not owed by the Lady. This duty in the early modern period was significant. As one legal commentator described, infants owed their parents complete “subjection and obedience” (Blackstone I: 441). The Lady, in contrast, could legally choose to disregard parental authority over matters relating to her marriage, choice of spouse and guardianship.

Only at the age of twenty-one were both males and females considered fully “at [their] own disposal” (Blackstone I: 451), that is, at the age freely to alienate

their lands, goods and chattel and make an endowment. Nevertheless, the exception permitting females at the age of twelve and males at the age of fourteen to make testaments of their proprietary estate also provided that they could purchase lands and make deeds (that would require ratification at the age of twenty-one). The Lady's age, then, signals an inherent potential, permitting the Lady to be recognized as significantly more independent before the law than her brothers.

Social constructions of the *feme sole* in domestic handbooks, marriage manuals and conduct books reveal the decidedly problematic position held by an unmarried, or in the Elder Brother's words "unowned" (407), female adult. A figure simultaneously represented as "menaced and menacing"²⁵ (both, arguably, at play in A Mask), she was continuously cautioned to behave in direct contravention to her potential legal power— meekly, obediently and silently. For example, The Ladies Dictionary defined "Obedience, in virgins" under its own separate heading, emphasizing that it was not merely "comely" but also a "duty" "to pay

²⁵ Kelly and Leslie 16. For further studies of virginity, see also Berry; Jankowski; and Loughlin.

obedience where the laws of God and Nature require it"
 ([N.H.] 341).

The most important, nearly "fetishized," virtue of the *feme sole* was her chastity. A vexed construction in the early modern period, chastity underwent substantial redefinition, as the Protestant glorification of married chastity replaced the Catholic elevation of perpetual virginity (Jankowski, 31-109). Conduct literature and sermons provided the most ready sources for this construction of ideal behavior, as well as Protestant women's legacies, diaries and occasional poems. None of the Protestant writers espoused perpetual virginity as the ideal for women, generally failing even to use the term virginity, while relying instead on the term chastity (Jankowski 96, 107). Unmarried chastity, as they constructed it, functioned as a temporary virtue supplanted ultimately and unavoidably by marital chastity. The Protestant construction of female virtue, thus, envisioned no viable alternative to marriage for the early modern woman (Jankowski 107).

While conduct literature obsessively detailed how the *feme sole* should dress, speak, carry herself and behave towards men and women, what she should read, how she should be educated and what her domestic duties entailed, such

literature altogether failed to provide her with any advice regarding how she should handle her potential fiscal and proprietary responsibilities.²⁶ Quite the reverse, one domestic manual even insisted that "the governement of estates and publike weales are not committed into the handes of women ... [Therefore,] let them be restrained to the care and governement of a familie" (Salter 103).

Authors of these conduct books, unable to view women except in relation to the paradigm of marriage, apparently thought it unnecessary for women to learn about the government of estates. These conduct books pervasively share the attitude of the author of The lawes resolutions that "all women are understood either married or to be married" (6).

Yet, the reality of early modern financial arrangements surrounding marriage, especially the necessity of providing a portion or dowry for the wife, often meant that not all daughters could be married (Jankowski 25). Demographic evidence reveals a dramatic increase in the number of single women in the seventeenth century, particularly within the upper and lower classes (Bennett and Froide 306). Adult women who never married comprised

²⁶ I make this claim after having reviewed nearly every domestic manual written for women between the dates 1475 and 1640, as listed in Hull 67-70.

between 25 and 30 percent of the female population and between 10 and over 20 percent of the entire population (Bennett and Froide 237), a statistic substantially higher than at any time prior or since (Erickson 48). The vast majority of adult *femes sole* lived as dependent daughters in their parents' households or as servants, lodgers or relatives in third parties' homes. Yet, a small percentage of *femes sole* did actually head their own households and would presumably have benefited from practical advice regarding their economic and legal rights (Bennett and Froide 239).²⁷

The small percentage of independent *femes sole* has been attributed to the legal and societal pressures that made it virtually impossible for single women to support themselves. Municipal authorities routinely issued edicts in the seventeenth century, for example, making it a crime for *femes sole* to live independently of fathers or masters (Bennett and Froide 140-41). As Susan Amussen explained,

²⁷ While Bennett and Froide estimate that only one percent of single women headed their own households (239), Erickson, using probate documents, has estimated that about one-half of the population of single women were living alone at their deaths (Erickson 191) (although, presumably, a vast majority of these single women were widows rather than never-married single women).

"[b]y law all those between the ages of fifteen and forty-five who were unmarried and without estates of their own were required to be in service; such people could be forced into service, sent to gaol or punished as vagabonds" (48). Historians have suggested that such edicts indicate that *femes sole* who lived independent of fathers or masters were perceived as a direct threat to the patriarchal social order (Willen 561). While legally required to support themselves, municipalities overtly discouraged single women from establishing their own businesses or working autonomously through the denial of licenses permitting them to trade independently or to set up alehouses (Bennett and Froide 246-47). *Femes sole*, then, experienced tangible economic and social discrimination that virtually forced them to work in the service of third parties. Nevertheless, elite single women withstood a greater chance of achieving independence than any other category of adult women, married or unmarried, and comprised the majority of unmarried women who did manage to set up their own households (Mendelson and Crawford 169). The Lady, whose elevated social class would have permitted her ample means to establish her own household without public assistance, thus, fits the profile of the early modern perpetual virgin.

B.

Critics have increasingly focused on the Lady's "revolutionary" force and have attributed this force not simply to her chastity, but more specifically to her virginity.²⁸ Many different explanations of the importance of virginity, rather than mere chastity, to the masque have been suggested, ranging from the biographical (Kendrick; Leonard, "Milton's Vow of Celibacy") to the psychoanalytic (Kerrigan), sociological (Wall), generic (Shohet) and politico-cultural (Rogers; Kendrick). John Rogers, importantly, interprets her "apocalyptic" virginity as "burst[ing] through its conventional enclosure within the confines of normative conjugal ideology" (236, 232). Labeling the form of her virginity "liberal," he defines it as the "practical liberation [of the virgin] from the social constraints that attend the institution of marriage" (237). Of particular relevance here, both Julie Kim and

²⁸ For the principal reading arguing that the masque represents the narrow virtue of virginity rather than the virtue of chastity (including marital), see Woodhouse 30. Contra see Tillyard 54; Gale 181; Leonard, "Saying No to Freud"; and Leonard "'Good Things.'" which read chastity as not restricted to absolute virginity but that encompasses marital chastity as well.

Richard Halpern also suggest that the early modern practice of patrimonial inheritance required both virginity of the *feme sole* and marital chastity of the *feme covert* in order to insure the legitimacy of the male hereditary line. Virginity functioned as a means towards an end-- the integration of the woman into the patriarchal sex economy. Thus, "if not relinquished at the proper moment ... virginity ... overturn[s] domestic rule" (Halpern 94) Without fail, however, these critics read the Lady's virginity as temporary and the ending of the masque as a reinscription of the Lady into patriarchy upon her return to her family (see, for example, Kim 3; Rogers).

While these critics have, thus, noted the connection between perpetual virginity and the threat to patriarchal authority, they have not analyzed the ultimate implications and direct consequences of this threat. This chapter intends to flesh out such connections by exposing how A Mask records the practical, legal effects of remaining unmarried. Thus, while the mask does inscript the Lady within the counters of early modern gender / sex ideology, the work also insists that the Lady's virginity may radically "be term'd her own" (419); and, further, that the particular force of her virginity resides not only in its link with her sexuality as a property right owned,

ultimately, by men, but also in its link with her own ability to evade the strictures of coverture. Perhaps most revolutionary from a gender perspective is that the Lady forces the reader to acknowledge that women cannot simply be viewed as property—or the conduits of property—but as having their own interests in property.

C.

A single Life is void of Care,
 For married Wives much pinch and spare
 ... Besides my Mother she doth cry,
 I shall have all when she doth dye" ("The Crafty
 Maid" 1-2, 11-12).

This early modern ballad openly associates the unmarried state of women with economic freedom, suggesting that this connection was not wholly lost on the popular imagination. Nor was it lost in A Mask. The liminal space of the wood allows, upon the loss of her brothers, for the Lady to view herself in a sense as orphaned, without parental or other authority figures. Her worry that the "thievish night" (195) has brought about "som fellonious end" (196) seems to allude to a fear that her brothers have

been murdered (the most significant felony in the period), a fear that is only temporarily assuaged by Comus in the guise of a shepherd. Unaware that her brothers live and that the Spirit has been dispatched for her "defence, and guard" (42), the Lady—never once mentioning her parents—views herself as wholly independent. By so effectively erasing all of the Lady's familial connections and any guardians that could potentially have controlled her estate, the masque constructs a portrait of a *feme sole* in a position to inherit, rather than find herself subject to, patriarchal power from her father.

The Spirit describes the Elder Brother as the father's "heir" (501), indicating that the family's property transference followed the system of primogeniture that provided that the eldest son inherited all of his deceased father's freehold property. If there were no sons to inherit (conceptually at work in A Mask), however, and no will to the contrary, then the daughters inherited the property equally. As one legal historian has remarked, one implication of this system of inheritance was that female heirs were preferred to distant male heirs; and consequentially, the ownership of land was "drastically reorganized at every generation. Land changes hands between the sexes at every marriage or death, and large quantities

of land may come under the direct or indirect control of women" (Goody 168). Nevertheless, should the daughters be married, then, by virtue of the system of coverture, the daughters' husbands would take sole control (although not outright ownership) of any freehold property during the course of their marriages. Technically, the poem does not describe Lady Alice's parents as dead.²⁹ Nevertheless, the Lady does have in the space of the wood the potential to inherit considerable property. Further, she would have been the only child of the Earl of Bridgewater legally of age to have some control over such property.

The early modern rules of inheritance further provided that all children, regardless of their sex, were entitled to equal portions of their parents' moveable goods. If a man died intestate, then his children inherited two thirds of his moveable goods, divided evenly among them. The local ecclesiastical rules of inheritance operative in Wales at the time of A Mask's performance would also have impacted

²⁹ Although it should be noted that in the early modern period, one-third of the population would have lost at least one parent before the age of twenty-one, and half of all women would have lost their fathers prior to their marriages (Erickson, 93).

the Bridgewaters upon their move to Ludlow Castle. These rules granted even more radical economic benefits to both female and male children than did the rule of reasonable parts. Even if the father had made a will to the contrary, his children automatically inherited one third of his moveable goods, divided equally amongst them (Erickson 28). Unlike her three married sisters, the Lady would have inherited moveable goods directly, rather than having them, by virtue of coverture, become the outright property of a husband. Further, unlike her two younger brothers (who, if not dead, then are, due to their minority, ineligible to take control of property), the Lady had reached an age that would have permitted her at least some control over this inherited property.

Most interesting about this hereditary frame is the manner in which the masque foregrounds the Lady's legal status and its implicit power. The Lady's most aggressive statements in her debate with Comus deviate from the line of arguments initiated by Comus. She defends her freedom by emphasizing her potential economic power. Comus and her brothers serve as the mouthpieces for the classic formulation of the unmarried woman as a "treasure" (399) or "purchase" (607), as Julie Kim has so cogently argued. The Lady, on the other hand, stresses that she is not simply a

property right that inures to men, but that she holds power over property itself. The Lady thereby re-directs Comus's arguments in which she is figured as "natures coyn" (739) that "must be currant" (740) to focus instead on her own ability to spread wealth. As she insists:

If every just man that now pines with want
 Had but a moderate and beseeming share
 Of that which lewdly-pamper'd Luxury
 Now heaps upon som few with vast excess,
 Natures full blessings would be well dispens't
 In unsuperfluous eev'n proportion (768-73).

Critics have often noted the politically radical position of her call for greater economic equality through the redistribution of natural resources (Hill, Milton and the English Revolution 47). I would argue that the speech also merits attention as an example of Milton's radical gender politics. The Lady's economic formulation derives its particular force from the fact that, as an heiress, she would have had the legal power to bring about her proprietary ideals. The law endowed both adult men and *femes sole* with identical agency over their ancillary rights in property, including control over its disposal,

management, improvement and rental. *Femes sole* also stood vis-à-vis third parties in the same legal position as men, fully capable of entering into binding contractual arrangements, including property transfers, with them. Unlike the majority of *femes covert*, *femes sole* could also make a will, bequeathing property to third parties of their choosing. Should the Lady have wanted to distribute more evenly her fortune, arguably "vast" indeed, by transferring, deeding, gifting or otherwise bequeathing her title to property to "just" and "pin[ing]" third parties, she would, therefore, have had the unqualified legal right to do so upon reaching the age of majority.

In her most compelling statement of her potential strength as a *feme sole* and its ties to property alienation and usage, the Lady proclaims that

... the uncontrouled worth
 Of this pure cause would kindle my rapt spirits
 To such a flame of sacred vehemence,
 That dumb things would be mov'd to sympathize,
 And the brute Earth would lend her nerves, and shake,
 Till all thy magick structures rear'd so high,
 Were shatter'd into heaps o'er thy false head" (793-99).

These words, important for their apocalyptic and iconoclastic power, also bear import for their voicing of her practical legal authority. As the owner of property, she could, in other words, have raised and conversely destroyed buildings. Comus, she insists, has failed to wrest control of her true property; and his magical palace would tumble in the wake of this power. She thereby re-conceptualizes her position from that of an object of property to that of the subject of property.

One Puritan divine, fearing the link between virginity and female ownership of property, warned that without marriage "there would be a confused mixture in procreation, and no men would well know what children are their own ... [or] know their lands or houses" (Baxter I.viii.5). The Lady's status as a propertied *feme sole* threatens to do just what Baxter fears most—loosening the ties of patrilinear inheritance and the laws of coverture whereby the male can securely call his home his own. When Comus interprets the Lady's singing as a "home-felt delight" (262), he is perhaps hearing her delight in calling her home her own. The Lady's subsequent rejection of Comus' vision of the "homely features ... [who] keep home" (747), may indicate not a rejection of sexual freedom, but an

embrace of the mental freedom to envision a future not trapped by coverture in a husband's home rightfully her own.

E.

Give me but before I die
 A sweet, but absolute retreat,
 'Mongst paths so lost and trees so high
 That the world may ne'er invade
 Through such windings and such shade
 My unshaken liberty ([Anne Finch], "The
 Petition for an Absolute Retreat" 1-6).

Amongst the "perplext paths of th[e] drear wood" (37) of A Mask, the Lady, so lost, wanders with no authority figures to guide her--or to dictate her life choices. Instead, the work dramatizes her efforts to fend for herself, as the magical powers of her virginity, as in Anne Finch's poem, grant her an unshaken liberty. The masque's formulation of the virtue of virginity and its consequent effects derive, as this section will argue, from the *feme sole's* legal right to freedom.

The masque consistently figures the Lady's chastity in

terms that allude to the "high mystery" (785) of the *feme sole's* specific economic power, mysterious, perhaps, because not exercised by the majority of *femes sole* in the early modern period. The Elder Brother describes the Lady's chastity as a property interest exclusively owned by her--the "divine property of her first being" (469) and as a "strength" (415, 418) residing in some "hidden" (415, 418) and inaccessible place (and therefore, by implication, one that cannot be altered or taken). He emphasizes that this strength "may be term'd her own" (419), again underscoring that the *feme sole's* strength derived from her rights in property, and that these rights inured solely and separately to her. Likewise, he envisions her mind as an "unpolluted temple" (461), i.e., a physical place over which she has sole ownership rights and physical access. Her chastity compares to that of Diana (422) and Minerva (448), both independent women who remained perpetually, rather than merely transitionally, virginal.

Even Comus, at times, employs the rhetoric of property ownership in his understanding of the Lady's chastity. Upon hearing the Lady, he surmises that "somthing holy lodges in that brest" (246) in "hidd'n residence" (248), another instance of the poem figuring her chastity as an inaccessible and inviolable property. He admits to

"fear" (800) in the face of her "superior power" (801), a power that, as his allusions to Jove's "thunder" (804) and the "chains of Erebus" (804) reveal, he perceives as legalistically construed and judicially enforced.

The Lady, most importantly, understands her strength as determined by her legal status. The Lady's construction of her virginity emphasizes not merely its moral, psychological or sexual attributes, as critics have thus far argued, but also its economic and proprietary ones. She describes her virginity as a "pure cause" (794), highlighting its political nature, and as "Sun-clad power" (782), which, as Kathleen Wall has noted, alludes to Zeus, symbol of logic, reason and the law (Wall 54). She distinguishes between chastity and virginity, I would argue, because chastity, considered a virtue particular to married individuals, does not provide the Lady with the proper model for her behavior. As a chaste *feme covert*, she would not have the legal power to effectuate economic reform and proprietary change. She would have had to relinquish such power to her husband upon her marriage. In order to envision a future in which she has proprietary independence, the Lady was bound to embrace virginity, not because of its association with sexual abstinence, but rather because of its association with marital status.

Virginity, understood not as physical inviolability, but rather as singlehood, thus, becomes the Lady's appropriate model of behavior.

In emphasizing virginity rather than chastity, A Mask bears a marked resemblance to texts written primarily by single women in the seventeenth century that critique marriage as an institution that denies women the possibility of freedom and, accordingly, embrace "A Virgin Life."³⁰ For example, Sarah Edgerton wrote of men:

They're wise to keep us slaves, for well they know,
If we were loose, we soon should make them so.
We yield like vanquished kings whom fetters bind,
When chance of war is to usurpers kind;
Submit in form; but they'd our thoughts control,
And lay restraints on the impassive soul ("The
Emulation" 14-19).

This poem subtly echoes the Lady's plight— "chain'd up in alabaster" (660) and attempting to retain control of her

³⁰ "The Virgin Life" refers to a poem written by Jane Barker cited below. See Rogers 238, which also sees a connection between this poem and A Mask.

thoughts. As the Lady states: "Thou canst not touch the freedom of my mind / With all thy charms, although this corporal rind / Thou has immanacl'd" (663-65). Freedom, then, becomes the most telling attribute of virginity, affording women a space for spiritual and proprietary independence. Again, as one single woman, upon pressure from her parents to marry, described in her autobiography: "As to myselfe, I was exceedingly satisfied in that happie and free condition, wherein I enjoyed my time with delight abundantly in the service of my god ... Nor could I, without much reluctance, draw my thoughts to the change of my single life, knowing to[o] much the caires of this world sufficiently without the addition of such incident to the married state" (Autobiography of Mrs. Alice Thornton 49).

Male-authored texts were also not wholly silent on the benefits of perpetual virginity. While the Protestant injunction to marry constituted the dominant ideology, conduct manuals did at times acknowledge that maidenhood offered freedom from wifely subordination: "Ye ... maidens who are free, be not too free and forward in giving your consent [in marriage] to whom you know not. Amongst other motives, oft think of this point of subjection to which all wives are bound ... After you are married it is in vain to think of freedom from subjection. By taking husbands and giving yourselves to be

wives, you bind yourselves to the bow of the man, as long as he liveth (Gouge 340). So, too, Richard Braithwaite characterized virginity as freedom from servitude to men: "Others you may command, by none commanded. Others will vow their service unto you, while you from all servitude are freed. Live then worthy the freedom of so noble a condition, for your virgin state wants nothing that may enlarge her freedom" (252). Both male and female authors, thus, understood the status of the *feme sole* as affording her freedom, spiritual, economic, religious and intellectual in nature.

The frequency with which the word "freedom" arises in such texts underscores the masque's own iteration of this term. Critics have generally been loathe to read the ending of A Mask as anything less than an unequivocal celebration of marriage due to the Lady's silent return to her father coupled with the Spirit's allusion to Cupid and Psyche.³¹ Accordingly, in the words of Kim, the masque "does not undermine patriarchy ... [but] merely reinscribes the patriarchal limits" (17). Yet, I think that the ending offers the reader more instability and reservation than has previously been noted, particularly in light of the ending's variable uses of the term freedom.

³¹ See Tillyard for the most important articulation of this reading.

The Spirit's vision of Cupid and Psyche is hymeneal, but one must question the particular rendering of this marriage:

Celestial *Cupid* her fam'd son advanct
 Holds his dead *Psyche* sweet intranc't
 After her wandring labours long,
 Till free consent the gods among
 Make her his eternal bride" (1004-08).

Psyche has no say in her betrothal. Nor does she give her "free consent" (1007). She is simply given by the gods as a gift to Cupid. As the next chapter will discuss in the context of Adam's and Eve's marriage, such a depiction of female consent does not support the notion of the freedom to choose and, certainly, is far removed from the kind of freedom espoused throughout the masque by the Lady. Psyche, in some ways, bears resemblance to the Lady, entranced and silenced at the time of her rescue. If this vision constitutes a prefiguring of the Lady's future, then the vision is one of coerced patriarchal marriage, in direct contravention of all that the Lady has proclaimed as "the sage / And serious doctrine of Virginitie" (786-87).³²

³² See Halpern 96-7 for a parallel reading of this vision ("In A Mask, heavenly bliss seems to be only a trope for

Further, an important attribute of conduct literature was the stress on chastity as the compendium of all female virtues. Dorothy Leigh's legacy, for example, written for her three sons, stresses that "a woman that is truly chaste, is a great partaker of all other virtues... the woman that is not truly chaste, hath no vertue in her" (29). So, too, Juan Luis Vives argued: "chastyte is the principall vertue of a woman and countrepeyseth with all the reste: if she have that, no man wyll looke for any other & if she lacke that no man wyll regarde other" (sig. L4v). The characters in A Mask share this characterization of virtue. The Elder Brother believes that "Vertue may be assail'd, but never hurt, / Surpris'd by unjust force, but not enthrall'd" (589-90); while the Lady views a "vertuous mind" (211) as comprised of Faith, Hope and Chastity (213-15). Virtue in the masque, as in Dorothy Leigh's legacy, functions as a metonym for chastity, or, in the Lady's re-formulation, virginity.³³ The final lesson of the masque, spoken in the Epilogue by the Spirit-- "Love virtue, she alone

wedded bliss, with the result that no space remains for woman's liberty, even beyond the "sphery clime"). My interpretation, I would add, should also expose a troubling aspect of interpreting this image of marriage as "healthy, if idealistic" (Flannagan 114).

³³ See Dyson 104 for a reading that also views chastity as a general metonym for virtue.

is free (1019)-- seems to indicate that one should "love virginity, she alone is free." The clear association of freedom in the masque with the *feme sole's* economic and spiritual independence further clarifies this lesson. A Mask's ending, then, while foreshadowing a marital union, does not imbue this vision with the moral and spiritual values so important to the masque. The possibility of freedom for the Lady, hitherto deemed a "sublime notion" (785), either has been unceremoniously trammelled in favor of a coerced marriage or resides submerged within the masque's final morale.

One final observation likewise undercuts the didacticism of the masque's ending. Lady Alice, as the youngest in a long line of sisters, was not actually married until the age of 35-- quite late, by seventeenth-century standards--due to her father's inability to provide a substantial enough portion. All of her sisters had already married at the time of A Mask's performance "which must have called heavily on his resources" (Brown 18); and her father was seriously in debt by the late 1630's (Brown 18). Thus, Lady Alice's ability to marry at the time of A Mask's performance was already suspect. Whether or not Milton would have been privy to such private financial information about the Earl of Bridgewater is impossible to know, but Lady Alice certainly occupied a fairly common and well understood place in the period, given the large

large percentage of aristocratic single women who never married due to financial constraints. It, thus, seems further questionable whether Milton would have wanted to glorify unambiguously a future status for Lady Alice that would have conceivably been impossible for her to attain.

F.

Since gracious heaven, you have bestow'd on me
 So great a kindness for virginity,
 Suffer me not, to fall into the power,
 Of man's, almost omnipotent amour.
 But in this happy state, let me remain (Jane Barker,
 "A Virgin Life" 1-5).

A Mask is replete with embedded allusions to myths of the rape or abduction of virgin women, including Callisto, Daphne, Hellena, Sabrina and Philomel (see Wall; Oram). So, too, as previously discussed, recent scholarship has also emphasized the sexual scandal involving the Earl of Castlehaven (brother-in-law to the Earl of Bridgewater) in 1631; the Earl of Bridgewater's successful investigation and prosecution of the rape of Margery Evans, a serving maid; and the Court of the Marches, over which the Earl of Bridgewater had assumed the

new viceregal position as Lord President, as responsible for the prosecution of sexual offences.³⁴ It is my contention that the mythological allusions and historical events do provide an important context for an interpretation of A Mask, but that critical to this analysis is an awareness of just what a seventeenth-century reader understood by "omnipotent amour," or, the crime of rape.³⁵

The term "rape" derives from the Latin *raptus*, primarily defined in the early modern period as a theft or seizure. When its object was a woman, rape specifically referred to abduction ("to carry off (a person, esp. a woman) by force" (The Oxford English Dictionary v.2.2)). While the sexual meaning of rape as forceable intercourse with a woman without her consent existed in the seventeenth century, the concept of rape as a crime of property—in particular, the theft of a daughter from her father or a wife from her husband—constituted the more prevalent definition of the crime. These statutes were particularly

³⁴ See Breasted; Mundhenk; Wilding; and Marcus. Contra see Creaser.

³⁵ Only two previous essays have interpolated the legal definition of rape with A Mask. See Nancy Miller and Gale 26-63. Yet, these essays focus on the troubling place that consent occupies in the definition of rape and ignore the consequences of viewing rape as an abduction, as this section will discuss.

concerned with the abduction of heiresses without the consent of the father and with the intention of marrying the woman to attain control of her estate. Thus, a man could be found guilty of rape for having taken a woman away from her "owner," regardless of whether any sexual act took place. This definition also encompassed a man's voluntary and consensual elopement with a woman of property against the wishes of her father.

The operative seventeenth-century abduction statute at the time of the performance of A Mask specifically punished the abduction of a married or unmarried woman owning property either in goods or land (even with her consent) or in wardship, by leveling severe monetary damages on the abductor.³⁶ The statute permitted only the woman's husband or father, rather than the woman herself, to recover monetary damages, as the abductor's act, again, was understood as the unlawful seizure of the husband's or father's property. If the woman was an unmarried minor, then the abductor could also be imprisoned for two years. The statute treated the more serious offence of forcibly abducting and marrying a woman of property (in either goods or land) or an heir apparent ("vulgarly called *stealing an*

³⁶ 3 Hen. VII. C.2.

heires" [Blackstone IV: 208]) as a felony punishable by death.³⁷

To understand the crime as primarily proprietary, rather than sexual, in nature leads to a reading of A Mask that places little importance on whether one can implicate the Lady as contributing to the "gums of glutinous heat" (917)³⁸ or whether the Lady's volition is somehow figured as problematic in the work.³⁹ Indeed, whether or not she had consciously or unconsciously consented to her taking would have been virtually irrelevant under seventeenth-century law. Instead, her propertied status as a potential heiress and the expectation of her having a sizeable portion at the time of her marriage would have been the determining features in any criminal investigation of Comus.

Thus, Comus's threat to the Lady, universally understood by critics as sexual in nature, could have been marital as well. Upon "distinguish[ing]" (149) a virgin in

³⁷ For further background on the crime of rape in the early modern period, see The lawes resolutions 376-402; Blackstone IV: 208-16; Bashar; Baker 603; and Catty 9-24.

³⁸ See Flosdorf, who initiated the debate by inquiring whether the gums indicate that the Lady "has been secretly responding to the temptation" (5). See also Le Comte; and Shawcross, "Two Comments."

³⁹ See, for example, Kerrigan 29. Contra see Leonard, "Saying 'No' to Freud" and "'Good Things.'"

the woods, he initially hopes to "stock" further his "herd" (152) with her. But, once having heard her sing, his ambition changes, and he determines that "she shall be my Queen" (265). Certainly, this term referred to a prostitute in the period, as annotations of the masque are quick to clarify. But, perhaps, he is also referring to making her his wife. Comus's likeness to a king, residing in his "stately Palace" (stage directions at 657) with his retinue of followers, and his voicing of royalist ideology gives further credence to this reading. Should Comus have successfully accomplished this task, he would have found himself as "[r]oot-bound" (662) as the Lady, that is, he would have found himself entitled, by virtue of the system of coverture, to seize the Lady's proprietary roots—her portion and her real and personal property.

This focus on abduction resolves one of the vexed sites within the work, as critics have worried over the Lady's emphasis on her freedom of mind in the face of physical restraint. Rather than reading the masque as capitulating in an ideology that required both bodily and spiritual purity in a woman and, therefore, perceived a rape victim's soul, as well as her body, as sullied by the crime (Nancy Miller; Gale 26-63), I would urge a reading that instead places greater weight on the Lady's own words: "Thou canst not touch the

freedom of my mind" (663). This statement utterly rejects the prevailing ideology of rape by emphasizing spiritual and mental purity over that of bodily purity. Her words also imply that, even if Comus had actually raped her, her virginity, understood, as the previous section argued, as her single marital status, remained intact. Comus may have been able to ravish her physically, but he would not have been able to make her his "Queen" (265) or wife—without her consent. Sullied or unsullied, she would have remained a *feme sole* heiress, retaining her economic, proprietary and mental freedom. Given that women in the period were so vulnerable to physical ravishment—either by rape or, more insidiously, by their legal duty to comply in sexual relations with their husbands⁴⁰—the voicing of the masque's claim ('one should love singlehood, it alone is mentally free') is all the more compelling.

* * * * *

Elizabeth Cavendish Egerton married John, the Elder Brother of A Mask, in 1641 at the age of fifteen. "Too

⁴⁰ See Hale I: 635 ("A husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife has given herself in this kind to her husband which she cannot retract").

young to be wedded",⁴¹ in the words of her stepmother, Lady Margaret Cavendish, the couple initially lived apart. In 1649, John's father, the Earl of Bridgewater died. Indeed the "heir" (501) of his father, John inherited his father's title, becoming the Second Earl of Bridgewater, and properties. Lady Elizabeth, described by Betty Travitsky as "subordinated" and "thoroughly disempowered" (91, 121) in her marriage to John, seems to have wholly capitulated in the dominant ideology of gender relations in the period. In a private meditation upon marriage, she unambiguously argued: "Some account of Marriage as an unhappy life, by reason there is an obedience must belong from ye wife to ye Husband; & 'tis great reason it should be so, since we are commanded, by those ye are above our Capacity of reason, by God himself" (Travitsky 190). And, again: "though [God] commanded us to obey a husband, for God is never unjust to set us a taske which we cannot performe; for though 'tis an action hard to understand, by our blind & dull apprehension, yet if he commands it, he enables us to performe what is his pleasure (Travitsky 191).

Lady Alice watched as her younger brother, John, became the heir of her father's property and title and the

⁴¹ Quoted in Travitsky 107.

"master" of Lady Elizabeth. Lady Alice, single at this time, would not marry until several years later. Perhaps it is not too farfetched to imagine that the critical lesson internalized by Lady Alice of the Castlehaven scandal was the extent to which her aunt's tragedy provided terrible proof of the validity of Lady Elizabeth's words.⁴² Within the gender / sex ideology of the period, a *feme covert* had no real ability to escape the authority of her husband. Milton's masque, with its undercurrents of marital and economic critique and ties to other female-authored critiques of the period, quietly advocates singlehood as the means to avoid the fate of the Countess of Castlehaven and to retain at least some control over her property.

⁴² I am mindful of the extent to which Herrup's A House in Gross Disorder, has provided a revisionary interpretation of the Castlehaven scandal, insisting that scholars should not automatically assume the Earl of Castlehaven's guilt. I am, accordingly, sensitive to the impossibility of determining definitively whether Lady Alice viewed her aunt as innocent or somehow culpable. Nevertheless, the judicial system's pronouncement of the Earl of Castlehaven's guilt, practically, privileged a reading of the scandal that viewed the Countess as having little agency in her marital relationship. Lady Alice, then, would have been at least aware that the dominant hegemony admitted that the institution of marriage had a detrimental effect on the status and independence of women.

III.

Relational Contracts in the Garden of Eden

Undisturbed, meanwhile, like the assumption that women generally consent to sex, is the assumption that we consent to this government (MacKinnon 644).

Anthony Fletcher has described "[t]he master theme of seventeenth-century political theory" as "the great battle between patriarchalists and social contract theorists" (292). Patriarchal theory, the dominant ideology of this transitional period, supported several principles—the divine right of kings, monarchical absolutism as well as female subordination—all of which derived support from biblical exegesis of the fall. The alternative construct of the social contract, an emerging hegemony that would not gain full expression until later in the century, arose as a revolutionary response to patriarchal theory. The social contract model vindicated liberal constitutionalism, religious liberty and freedom of choice. It, too, found its origins in the Genesis story.

John Milton's work, both his prose and poetry, resides

in a liminal space, in which the realm of patriarchal obedience and subordination vies with a simultaneous vision of a contract-based, egalitarian society. While critics have recognized the tension in Milton's work between two conflicting visions of society and have defined the former as patriarchal in nature, few have characterized the emerging worldview as determined by contractarian principles.⁴³ The tensions between two world views stand out most significantly in Paradise Lost, which startlingly foregrounds biblical exegesis in such a manner as to allow the creation of a unique story of origins. Milton's retelling of the fall borrows from both the Jahwist and Priestly versions of the Genesis story, allowing the competing discourses to invade the poem simultaneously,

⁴³ Prior discussions of the contractual elements in Milton's work appear in: Kahn, "The Metaphorical Contract"; Rosenblatt; Shawcross, "Milton and Covenant"; Lieb, "Paradise Lost and the Myth of Prohibition"; Lieb, "Milton and Covenant"; and Duncan. The most significant previous discussion of covenantal principles in Milton's poetry occurs in Laura Lunger Knoppers unpublished dissertation, League With You I Seek. It investigates Milton's prose and major poetry in light of Puritan covenant theology. Her thorough examination of Puritan conceptions of theological, marriage and political covenants provides an invaluable resource. She also presents a compelling analysis of the contractarian values underlying God's relationships with Satan and the Son of God in Paradise Lost. Nevertheless, Knoppers and I come to radically different conclusions as to Milton's depiction of the relationships between God, Adam and Eve in the poem.

interanimating and engaging each other. The operation in Paradise Lost of dual and conflicting stories of the origin of earth and of its political and social structure can be read as a trope for the uneasy coexistence of these two theories in the seventeenth century itself. Both independent of and deeply dependent on each other, the two theories fought to justify their own respective ideology by establishing the primacy of their vision in history (see Schochet 6-7).

Determining which of the discourses functions as privileged in the poem continues to confound and elude critics. Rather than unearth these tensions or choose definitively which world view proves dominant, this chapter will focus primarily on the contractarian hegemony in an effort to illumine its underlying logic and construction. By providing an overview of the infusion in selected works by Milton, and crucial passages in them, of such a vision, it becomes apparent that Milton's vision was deeply indebted to contemporaneous legal, political and religious theories of the contract.

The contract emerged in seventeenth-century law as the predominant archetype for articulating the perimeters of individuals' associations with each other. The trope of the covenant also infused the rhetoric of political theory

and religious discourse as a means of conceptualizing man's relationship with his government and God. Brief overviews of the legal, political and religious conceptions of the contract foreground the extent to which Milton's own relational constructions depend upon the contractual paradigm. Milton's prose statements on marriage, divorce and regicide, in particular, all find their precedent in contractarian ideals. It is in the Garden of Eden of Paradise Lost that Milton most compellingly actualizes an ideal society legally constructed on such contractual principles. The poem presupposes a prelapsarian state dependent upon express agreements between the characters. Astonishingly, the poem does not simply register a vision of what has become our modern legal society but also exposes the submerged hypocrisies and iniquities of this system. The power dynamics emanating from the poem demonstrate how the contract functioned, and continues to function, as an official discourse of control and power. In particular, the poem illustrates the extent to which the social contract model embeds within itself patriarchal assumptions, undermining the two theories' supposed differences.

A.

By the seventeenth century, the contractual model had established itself in the laws of marriage, annulment and commercial agreements as the principal frame for delineating individuals' relationship with each other. Significantly, in all of its particular incarnations, both public and private, reciprocal consent emerged as the preeminent contract principle.

From the twelfth century, canon law required evidence only of the mutual consent of the parties to uphold a marriage as legal and did not require parental consent, physical consummation, set or prescribed words or even solemnization in church. In 1653, Cromwell's Parliament passed the "Act touching marriage formation and the Registering thereof" which took jurisdiction over marriage formation out of the church and into civil government. This Act, thus conceived of marriage, not as a sacrament, but "in no other light than as a civil contract. And taking it in this civil light, the law treats it as it does all other contracts; allowing it to be good and valid in all cases, where the parties at the time of making it were, in the first place, *willing* to contract; secondly, *able* to contract; and, lastly, *actually did* contract" (Blackstone

I: 421).⁴⁴ Such requirements as solemnization in church were deemed merely "expedient" (Powell 56).

Although the Restoration annulled this law, restoring church weddings by the Book of Common Prayer, the emphasis on voluntarism and reciprocity in forming marriage contracts remained intact. Throughout the seventeenth century, to create a legally binding marriage, "[a]ll that was needed ... was a full, free and mutual consent" (A Treatise of feme coverts 25) of the individual parties to the contract. Nevertheless, the law did require some form of acceptance--either by words or deed: "it is not sufficient if either of the Parties alone do promise... the silent Party in this Case [is not] presumed to consent" (Swinburne 70). The courts required not only an express but also the free consent of both parties to find a legally binding marriage. In a situation in which consent seemed coerced or forcibly obtained, the law declared the contract void: "It holdeth not when it is extorted by force, or by such a fear as may ... [befall a constant man, because

15. For marriage legislation and regulation during the seventeenth century, see Durston; Ingram, Church Courts; Macfarlane, Marriage and Love; Houlbrooke; and Powell 28-100. See also Outhwaite.

marriages ought to be free]" (The lawes resolutions 59).⁴⁵

The original intention behind this legal formulation supports the contractual, rather than patriarchal, basis of marriage. Consent was regarded as a means of safeguarding individual freedom from the coercion of parental or family intrusions (Ingram, Church Courts 132-35).⁴⁶ The patriarchal practice of arranging marriages may have continued during this period, particularly in aristocratic and landed families (Ingram, Church Courts 137-40; Ezell 20-35); yet, the legal system explicitly denounced this practice. The decision-making of the church courts throughout the early seventeenth century likewise confirms that the legal system supported the concept of individual self-determination. Spousal litigation frequently turned on the validity of a contract. In those cases in which some doubt existed as to the intention of one of the parties or of the mutuality of the consent, the judges preferred to rule against a finding of an enforceable contract (Ingram, Church Courts 199, 210). In summary, "[i]t is difficult to envisage a more subversively

⁴⁵ The bracketed section of the quotation is a translation of the original phrase in Latin by Klein 36.

⁴⁶ See also Ingram, "Spousal Litigation in the English Ecclesiastical Courts" 35-57.

individualistic and contractual foundation for a marriage system" (Macfarlane 129).

Because canon law perceived of marriage as an indissoluble bond, the church did not recognize divorce in the sense of dissolution with an unencumbered right to remarry. The ecclesiastical courts permitted couples to sue for a *divorce a vinculo* (an annulment), only if they deemed the marriage null at the time of its creation by reason of one of the legally recognized impediments to its creation. Such impediments turned on either the couple's legal incapacity to marry or the lack of mutual consent. One could annul a marriage only by establishing one of the delineated impediments to matrimony, including, importantly, the failure to establish true consent. Lack of consent could be adduced from proof of some form of coercion, duress or constraint (even the fear of constraint) or of mistake (Baker 560). The impediment of mistake turned on the failure of one of the parties to disclose certain critical information to the other party upon which such party had based consent. The law on this point proved gender neutral, as both the male and female parties had the right to expect adequate freedom to choose and sufficient knowledge in order to make an informed consent. If no impediment existed, a couple could not annul

their marriage and could only sue for a *divorce a menso et thoro* (a legal separation from board and bed) with no right of either party to remarry during the lifetime of the other spouse. The ecclesiastical courts had complete discretion in deciding whether to grant a *divorce a menso et thoro* and would only do so upon proof of the adultery or extreme cruelty of either spouse.

B.

While only in the nineteenth century did the true concept of a 'meeting of the minds' become the standard definition of a valid commercial contract, by 1600, the modern sense of a contract dependent upon consent, had already evolved. The common-law defined a binding legal agreement as "a mutual agreement between the parties for something to be performed by the defendant in consideration of some benefit which must depart from the plaintiff, or of some labour or prejudice which must be sustained by the plaintiff."⁴⁷ The law of contract, then, like the law of marriage, required an arrangement between two parties

⁴⁷ Slade v. Morley (1598 hearing), in Baker and Milsom, Sources of English Legal History 485.

freely consenting, without constraint, to be bound to each other. Each party prior to entering into the arrangement had the obligation to disclose all information necessary for the other party to make a reasoned and voluntary choice.

Nevertheless, a patriarchal framework still structured women's relationship to the law of contract. Coverture explicitly denied that married women had the legal capacity to enter into binding contracts (except in exceptional circumstances). Once a woman had consented to marriage, her power of consent was thereafter eviscerated. The consent, so central to the formation of the marriage contract, functioned as the only legally recognized consent of her life, a kind of catchall consent to have the law thereafter treat her as subsumed within her husband's person. To contract marriage, then, was to consent unalterably to her exclusion thereafter from the social contract (Goodrich 17-46).

C.

The dominant political ideology of the early seventeenth century retained its patriarchal caste, even though contractarian principles did manage to imbue even

its rhetoric. Robert Filmer's Patriarcha, for example, relied on the trope of an original contract as a vehicle to defend the divine right of kings and the hierarchical structuring of society. He conceived of an original contract as thereafter justifying absolute rule. The people had conveyed in an ancient compact all of their rights and power to an original monarch and had thereby divested themselves of it for all eternity. Filmer traced this original grant of government to the fall when God declared Eve subordinate to the rule of her husband. Adam's rights over his wife established his, and his progeny's, political rights over the public sphere as well. Royalists thus envisioned the contract between the king and his people as unilateral, absolute and irrevocable. As Sir Dudley Digges described: "after [a contract] is made the dissent of the inferiour party ... cannot dissolve the compact. Consent therefore joined man and wife, king and people, but divine ordinance continues this union... whom God hath joined, let no man put usunder" (113). Thus, the contractarian model did not initially present itself as a fundamental threat to the patriarchal order but rather proved a useful rhetorical tool for the entrenched political power.⁴⁸

⁴⁸ On patriarchal uses of contractarian rhetoric, see

More radical theories of the contract, however, emerged during the Civil War period. Parliamentarians and more radical groups, like the Levellers, began to argue for religious and individual liberty and limitations to a ruler's authority over his people, borrowing concepts of natural law, social and political contracts, popular consent and trusteeship from the French Huguenots and New England Puritans, among others.⁴⁹ Social contract theorists found the genesis of political right not in an original and thereafter irrevocable contract, but in ongoing and ever-alterable contracts made between men living in the postlapsarian state of nature. Such consent theories "rest[ed] upon the actions of the subject himself and not upon his duty to accept the political order agreed to by his ancestors" (Schochet 8-9). As John Lilburne iterated, "institutional power by God amongst men, is by common agreement and mutual consent ... [and] is justly resistable

Schochet.

⁴⁹ The literature on many of the more radical groups, for example, the Levellers and the Diggers, and their employment of the social contract is vast. For a helpful introduction to the history of the social contract, see Gough. For a discussion of the analogy between marriage contracts and political contracts, and the conflicting uses of this analogy during the Civil War period, see Shanley.

and revocable" ("Preface"). After the execution of Charles I, the regicide was legitimized by arguing that Charles had failed to perform the terms and conditions of his Coronation Oath, thus breaching his covenant with the people of England. The Rump relied to such an extent on social contract theories to justify their establishment of a Commonwealth that one historian has described the social contract as "the official theory of the Commonwealth party" (Gough 99).

Interregnum and Restoration politics were also dominated by appeals to oath-taking, or contract formations, meant to evidence and secure 'voluntary' loyalty within parliament, the army, the church and the universities. The Solemn League and Covenant, the Negative Covenant and the Engagement gave way in the Restoration period to the covenants of the Corporation Act, the Act of Uniformity and the Test Act (Staves, Players' Scepters 24-29, 191-252).

Despite their differences, patriarchal and social contract theorists each felt an equal compulsion to establish an historic foundation for their respective theory through the reliance on an originary contract embedded in Genesis and granted divine sanction. Such reliance testifies finally to "the preoccupation of

seventeenth-century English political thought with origins ... [which] dictated that political obligation could be found in, and had to be consistent with, the beginnings of government" (Gough 143-44).⁵⁰

D.

The rhetoric of the contract is so wide-reaching and pervasive in seventeenth-century Puritan theology, particularly on the continent, that simply the iteration of the broad principles of the covenant of grace, the covenant of works and the covenant of redemption attests to the contract's centrality to Puritan thought. While the Old Testament covenant of works was conditioned upon the Hebrews' duty to obey ceremonial and moral law, the New Testament covenant of grace contemplated man's voluntary choice to believe, or have faith, as the condition upon which the contract depended. Again, the substance of covenant theology relied upon a contract legalistically construed: "By the word 'covenant' federal theologians understood just such a contract as was used among men of

⁵⁰ For discussions of the importance of originary stories and ancient custom to political theory of the period, see Schochet 136-76 and Pocock. See also Almond.

business, a bond or a mortgage, an agreement between two parties, signed and sworn to, and binding upon both" (Miller 375).⁵¹ Thus, foundational to the Puritan perception of the relationship between God and man is a "heavenly contract," with its connotations of revocability, reciprocity and mutuality (Zaret 4). As Puritan Thomas Blake described: "A mutual compact or agreement between God and man upon just and equal terms prescribed by himself in which God promises happiness to man, and man engages himself by promise for performance of what God requires" (3). The mutuality of this agreement is stressed repeatedly, distinguishing between a unilateral command by God and two parties together consenting to enter into an agreement. Thus, "neither a Law, nor a Promise, nor Seal annexed ... can be a covenant properly so called. A law from God, with a promise annexed, assented to by man, is a covenant" (Blake 2-3).

The federal Puritans' construction of the covenant of grace has particular relevance here as they traced the covenant's origins once again to Genesis. In an effort to

⁵¹ On Puritan covenant theology and its uses of contractarian rhetoric, see also Kahn, 85-88; Knoppers; Zaret; Gough 84-103; Miller, Errand into the Wilderness 48-98; and Haller 65-78.

undo Augustine's teachings on original sin and the harsh consequences of predestination, Adam's sin was viewed as a violation of an external contract: "If the sin of Adam were regarded as the violation of a contract, it could become externalized, forensic rather than internal, a punishable crime rather than an infinite sin. Seen in this light, the disobedience would amount to a bond broken, a lease violated" (Miller 400).

E.

It is no surprise, given the preoccupation of seventeenth-century political theorists and theologians with establishing a genetic story for contractarian principles, that Milton himself should devote several of his prose arguments and an entire epic to the contract's origins. In fact, this chapter's insistence on finding the rhetoric of the contract in Milton's writing derives from the social contractarians' and theologians' own insistence on treating the story of the fall as a contractual issue. Milton's prose writing on marriage and divorce and the limits of a ruler's power, in particular, is determined by and derives from the contractual paradigm.

Milton supported Cromwell's parliamentary act of 1653

that removed marital affairs from the control of the church to that of the state. In his treatise, The Likeliest Means to Remove Hirelings of the Church, Milton emphasized that marriage was not a sacrament, but a private and "civil ordinance, a household contract" (7: 299). He also subscribed to the legal formulation of marriage as contingent upon the free choice of the parties: "The first and most important point [in marriage] is the mutual consent of the parties concerned, for there can be no love or good will, and therefore no marriage, between those whom mutual consent has not united" (6: 368).

The rhetoric of liberal contractualism likewise infuses Milton's prose statements on divorce, as he defended the right of "*mutuall[y] consent[ing]*" couples to divorce due to mental or emotional incompatibility (2: 242). So too, the failure of either party to the marriage contract to perform its conditions would lead to the contract's revocation:

Marriage being a Covenant, the very being wherof consists in the performance of unfained love and peace, if that were not tolerably perform'd, the Covenant became broke and revocable ... for how can a thing subsist, when the true essence thereof is

dissolv'd?" (2: 747).

And further: "If one of them perform nothing tolerably, but instead of love, abound in disaffection, disobedience, fraud, and hatred, what thing in the nature of a covenant shall bind the other." (2: 748). Yet, consistent with seventeenth-century law, the rhetoric of patriarchal subordination surfaces just as prevalently in Milton's writings on divorce. The mutual right to divorce is circumscribed later in The Doctrine and Discipline of Divorce: there can be no divorce "against the will and consent of both parties, or of the husband alone" (2: 344).⁵²

J.W. Gough credits Milton as one of the first English publicists to expound a "thorough-going" contract theory (100), particularly in his arguments justifying regicide in The Tenure of Kings and Magistrates.⁵³ Consistent with later social contract theorists, Milton relied on an

⁵² For an analysis of Milton's formulation of divorce as deriving from a subordinationist vision of woman's autonomy, see Halley.

⁵³ For a discussion of The Tenure of Kings and Magistrates and the implications of its "metaphorical contract" with the reader, as well as a further overview of seventeenth-century political and theological uses of the contract, see Kahn.

originary contract to explain the emergence of government. Milton envisioned a postlapsarian state of nature torn by anarchy and lawlessness. Upon realizing that his behavior led to mutual destruction, man voluntarily agreed to exchange his freedom for legal protection and government restraints. Here again, one encounters the articulation of a genesis story that emphasizes the importance of the freedom to consent to a relationship. Significantly, Milton envisioned the contract between ruler and ruled not as irrevocable, but rather as conditional, subject to the ruler's continued and continual fulfillment of his obligation to his people. Otherwise, "if the king or magistrate prov'd unfaithfull to his trust, the people would be disingag'd" (2: 200).

Consistent with Puritan ideology, Milton conceived of even God's relations to man as contingent upon a mutually beneficial contract: God "appears to us as it were in human shape, enters into cov'nant with us, swears to keep [the Law], binds himself like a just lawgiver to his own prescriptions, gives himself to be understood by men, judges and is judg'd, measures and is commensurate to right reason" (2: 292). So, too, he perceived this covenant as revocable: "[God] makes a covenant, however, and the conditions of a covenant have to be fulfilled not by one

party alone but by both" (VI: 506).

This brief look at Milton's prose work emphasizes the extent to which Milton subscribed to contractarian principles in his perceptions of several types of relations—that between man and wife, ruler and ruled and God and man. These constructions conform to the legal, political and religious definitions of a contract as willingly entered into by informed individuals for rational reasons. Ultimately, this contractarian ideal has significant bearing on Milton's vision of individual subjecthood. Milton's emphasis on man's autonomy and free will underpins the contractarian paradigm. Without a conception of the individual grounded in his capacity to make rational choices, it would be impossible to perceive of contractual transactions as enhancing autonomy or maximizing one's best interests, the classic arguments for privileging the contractual paradigm even today (see, for example, Posner).

F.

So far this chapter has focused on the "juridico-discursive" attributes of contract theory by stressing its legal, political and religious constructions. These

constructions emphasize how the social contract theory presents a genetic story of voluntarism and freedom—mankind has exchanged the risks of natural freedom for a civil freedom protected by the state, where all individuals have the authority to exercise their freedom of contract. It is now necessary to turn to the “power effects”⁵⁴ of contractarian ideology on individual relations in Milton’s poetic writing. By exposing the level on which hegemonic values are actively lived and felt, it is possible to explore whether the ideal in fact conforms to reality. Paradise Lost’s articulation of the actual moments of contract formation has significant bearing on this question.

Milton’s depiction of the relationship between God and his Son is extraordinary for its intermixing of controversial religious notions with those of modern contract doctrine. Milton does not permit the Son of God simply to inherit kingship over the universe and equal standing with God by birthright. Instead, Milton constructs

⁵⁴ The distinction between a “juridico-discursive” theory of power and an analysis that explores the effects of power derives from Michel Foucault, particularly in: Michel Foucault, “Two Lectures” 78-108 and Foucault, The History of Sexuality 81-91. For a parallel discussion using a Foucauldian analysis, see David Weisberg.

the Son's elevation as part of an agreed upon arrangement between God and his Son. The parties explicitly enter into a contract of reciprocal promises and duties with each other in book 3 of the poem, whereby the Son promises, in exchange for God anointing him universal king, to sacrifice himself for the redemption of mankind. As in The Commonplace Book, Milton re-conceives hereditary rule, basing it on merit, rather than on blood (I: 433-35) (Stevie Davies, Images of Kingship 129-32; Knoppers, League With You).

So, too, God's relationship with Adam originates in a legally construed contract, one premised upon an offer and acceptance of reciprocal promises and obligations, not simply in a prohibitive command. At Adam's first moments of cognition, God appears before him and makes a formal offer of agreement. Adam is provided with the knowledge of the conditions of this contract (obedience to God in exchange for everlasting life and rule over life forms in Eden); his duties (no eating from tree of knowledge⁵⁵ and

⁵⁵ Regardless of Milton's statement in Of Christian Doctrine that God's prohibition not to eat from the tree was not a "covenant of works" (6: 352), this chapter insists that Milton depicts this prohibition as part of a voluntaristic and mutual arrangement between God and Adam. It should also be noted that elsewhere in Of Christian Doctrine, Milton indicates that he did conceive of the relationship between Adam and God as contractual in nature: "For Adam,

tending of garden); and a "liquidated damages" arrangement in the event of a breach of the contract (expulsion from garden and death). Adam then freely accepts this arrangement. When Adam questions his relationship with God after the fall, he uses the explicitly legalistic rhetoric of offer and acceptance, confirming the contractual nature of his relationship with God:

inexplicable

Thy Justice seems; yet to say truth, too late,
I thus contest; then should have been refus'd
Those terms whatever, when they were propos'd:
Thou didst accept them; wilt thou enjoy the good,
Then cavil the conditions? (10.754-59).

The legal definition of a contract as a mutual, free and informed arrangement thus operates as the principal frame for interpreting Adam's relationship to God.

The poem envisions a different relationship between Eve and God, however. While Adam's relationship with God

the parent and head of all men, either stood or fell as a representative of the whole human race; this was true both when the covenant was made, that is, when he received God's commands, and also when he sinned" (VI: 384-85). On the different readings of these two passages, see Shawcross 171-72; and Knoppers, "League With You I Seek" 17.

is framed as a contract, the poem does not make definitively clear whether Eve even has a direct relationship with God. In a contested passage in the poem, Eve herself states to Adam: "God is thy Law, thou mine" (4.636). This statement, taken at face value, suggests that Eve's "acceptance" of her marriage to Adam functions as her only opportunity to consent meaningfully to an agreement in the poem and that, in fact, she has not been granted the opportunity to covenant directly with God. This situation parallels a married woman's relationship to seventeenth-century law: she has no relationship. The "catchall" consent to marry functions here as the only consent Eve has the authority to make in the poem.

Nevertheless, one could choose to doubt Eve's statement, interpreting this passage as a misrepresentation of her relationship with God. Several passages in the poem imply that in fact Eve does have a direct and immediate relationship to God. Most forcefully, the text repeatedly makes clear that both Adam and Eve share in the contractual condition not to eat from the tree of knowledge (4.419-21; 4.515; and 9.651-52). This negative duty derives from God alone - not from Adam, just as does the duty to tend the garden in exchange for everlasting life. So too, only God, not Adam, has the authority to punish Eve for breach of the

agreement. Thus, Eve's relationship with God has certain similarities with Adam's relationship with God, in that it is based on a contractual relationship of reciprocal duties and promises and specifically delineated consequences in the event of a breach.

Yet, here the similarities end. God does not approach Eve at the time of creation with an offer to contract or grant her the opportunity to accept formally such an offer. Only Adam enjoys this privilege. The voice, which speaks to Eve, simply directs her to Adam. Nor does God appear before Eve later in the text with a formal offer. Raphael does visit Adam and Eve in book 5, but he does not offer to contract with Eve. Raphael approaches only Adam. Acting as God's designated agent, Raphael provides Adam with more information concerning his duties and the specific negative performance or condition upon which the contract rests (i.e., the ban against eating from the tree of knowledge in the face of imminent satanic threat). God evidently deemed it necessary to impart this further information to Adam; otherwise he would not have bothered sending Raphael. Thus, consistent with seventeenth-century commercial law, God provides Adam with the requisite knowledge necessary for Adam to make an informed choice as to his participation in and performance of the agreement.

The poem's treatment of Eve differs here again from its treatment of Adam, particularly in its formulation of the extent to which and the manner in which Eve actually acquires knowledge already deemed by God to be essential to performance of the agreement. God himself instructs Raphael to "Converse with Adam" (5.230). Unlike the designation, "man," "Adam" does not seem to incorporate Eve within its meaning. God's instructions, then, are specific that Raphael need only provide Adam with the warning and information.

During the conversation itself between Raphael and Adam, Eve sits "retir'd in sight" (8.41). Such a posture already problematizes Eve's ability to obtain the necessary information from Raphael: Can she hear clearly or does she lose out on important verbal and/or non-verbal communication? More disconcerting, Raphael does not treat Eve as if she is part of the discussion. He addresses Adam alone and refers to Eve in the third person. It is no surprise that, exasperated, she leaves the dinner. Of course, the text equivocates as to the reason for Eve's departure. Does she leave because she is disinterested in the discussion, because she is incapable of following the conversation, or because she already intuitively understands all that will be imparted to Adam? Yet, one

must ask, why, if she is so disinterested in the discussion, does she later linger behind a "shadie nook" (9.277), attempting to overhear what Adam and Raphael say to one another. Some of the information that Raphael imparts to Adam in response to his questions also corresponds to just that information Eve had sought from Adam earlier in book 4. Why, then, would she not have been interested in finding out the answers? The text does provide a rationale for her departure: Eve would rather have information delivered to her secondhand through Adam, as she would only find such information palatable if interspersed by "conjugal Caresses, from his Lip" (8.56).

Because Eve does not play the role of a fully present and active subject in the conversation, as does Adam, she is not given the opportunity to learn through the process of discursive reasoning. Had the angel permitted Eve to participate, perhaps she would have had enough training in logic and the discursive process to withstand the serpent's syllogistic reasoning. The text's devaluing of Eve's ability to partake in discursive thinking merely acknowledges that she has not had the opportunity to learn as has Adam. Several critics, in their attempts to elevate Eve's character, have emphasized her intuitive knowledge and access to revelation. Eve's relegation to the private

sphere of dreams and internal illumination, however, still underscores her unequal entry into the public sphere of logical discourse. Her gender construction here delimits her access to knowledge.

Eve's access not only to the discursive process, which leads to knowledge, but also to knowledge itself, is incomplete. At the end of book 6, Raphael explains that he has told Adam of the war in heaven in the hopes that Adam may "profit ... t' have heard / by terrible Example" (6.909-10). Yet, he does not require Eve to so profit by example, otherwise he would have insisted on her active participation in the discussion. Or, in the alternative, he would have insisted that Adam relate everything he has learned to Eve. However, Raphael only instructs Adam to "warn" her (6.908). This passage further implies that Eve has not been made privy to the entire conversation (if she had overheard everything, there would have been no need for Adam to warn her further).

In any event, Raphael does not provide a warning to Eve directly. Her knowledge of the satanic enemy comes only from what Adam remembers to pass on to her of his discussions with Raphael and from what she manages to overhear, initially sitting retired from view and subsequently, hiding behind the nook on her way back from

gardening. While Eve acknowledges that Adam had informed her of Satan's presence in the garden (9.275), one cannot help but wonder whether Adam could indeed have communicated adequately the gravity of the information in a moment of erotic embrace. There lurks the added doubt of Adam's ability to translate accurately the information itself. Does he relay everything or only a small percentage of the information God wanted relayed? Does he objectively translate the information, word-for-word, or is the transmittal clouded by Adam's subjective interpretations of the information? It is at best questionable whether Eve obtains the sum total of what Adam learned and ultimately required in order to evaluate the risks of entering into the covenant with God. In summary, Eve's inability to have access directly to a divine source leaves her excluded both from receiving information necessary to the formation of the contract and from receiving training in the discursive process necessary to her performance of the contract.

This chapter has devoted considerable attention to the issue of Eve's acquisition of knowledge, because it must be emphasized once again that one cannot legally form a valid and enforceable agreement without sufficient knowledge informing consent. God himself deemed the knowledge imparted by Raphael to Adam necessary to the formation and

performance of Adam's agreement with God. Eve's likely failure to have obtained adequately this information invalidates any agreement she might independently have had with God.

Further, it puts into question Eve's, and women's, very relationship to the contractual model. Eve's experience, leading to her reinstatement in the private sphere without so much as a valid agreement tying her to the public sphere, has contemporary relevance. Feminist critics, including Catherine MacKinnon and Carole Pateman, have examined the extent to which the public sphere derives meaning from its opposition to the private sphere in terms of both influence and status, and how this disparity coincides with inadequate legal protection in the private sphere. Paradise Lost dramatizes both the social contract's effect of creating separate public and private spheres and the consequences of this separation. Milton's poem also sheds light on the power effects underlying contemporary gender construction and women's tenuous relationship to the contractual model. A woman's consent, if even requested in the first place, will either be invalidated, as based on inadequate information or, as the next section will argue, coerced.

The paradisaal wedding functions as a critical scene

for interpreting the actual role played by consent in the formation of marriage contracts. Milton specifically describes marriage as a "Law" (4.750), thus placing it firmly within the perimeters of the legal construction that, as previously discussed, insists on mutual consent and abjures coercion. Yet, the voluntariness of Eve's consent is deeply problematical in the text.⁵⁶ In order to analyze the role of consent in Adam and Eve's marriage, one must begin nearly at the moment of their creation. A "voice" (4.467) draws Eve from her contemplation of herself in the water image. While critics have questioned whether this voice actually belongs to God, it is undeniable that this voice functions authoritatively: it pulls Eve from her independent musings and insists upon her compliance with its demands: "he / Whose image thou art, him thou shalt enjoy. / Inseparablie thine" (4.471-73; emphasis added). Milton has thus constructed this marriage as an arranged one by a patriarchal figure who demands obedience—the very situation by which Milton was elsewhere so appalled. Note also that Eve, upon recounting this conversation, concludes, "what could I doe / But follow strait?" (4.475-

⁵⁶ I am indebted to the following works for their similar interpretations of this scene and of its problematic portrayal of Eve's consent: Jacobus 35 and Halley 248.

76). This statement suggests the coercive element to her "choice"—or, more conclusively, that she really had no choice at all.

The sight of Adam still does not change Eve's reluctance, and she tries to return to the lake. Again, action is demanded, rather than asked, of her: "Return fair Eve" (4.481). Upon her return, Adam begins his "proposal" of marriage. The standard chain of circumstances needed to consent mutually to a legally recognized agreement, i.e., an offer and acceptance, do not exist in this exchange. Adam simply states that he "claim[s]" her (4. 487) and upon recognizing her lack of compliance, "Seiz[es]" her, albeit "gentl[y]" (4.488). Thus, Adam must rely on coercion for the formation of a contractual relationship between the parties, which under the seventeenth-century legal construction of a marriage, and even Milton's own construction of consent, would conceivably have rendered the contract null and void.

A further issue lurks in the formation of their marriage agreement, problematizing the legal status of their marriage. Eve does not affirmatively assent to their marriage, either by words or deed, as required by marriage law. She simply "yield[s]" to Adam (4.489), which he interprets as synonymous with consenting. Yet, silent

submission, particularly in the face of coercion, would have invalidated the legality of this contract. So, too, in the description of the consummation of the marriage, Eve does not actively consent to conjugal sex. She is "led" (8.511) to the nuptial bower where "[s]trait side by side were laid, nor turnd I ween / Adam from his fair Spouse, nor Eve the Rite / Mysterious of connubial Love refus'd" (4.741-43). She neither initiates nor consents to sex, but simply does not "refuse" it. Catherine MacKinnon, in a contemporaneous discussion of rape law, critiques this construction of a woman's consent:

... man initiates, woman chooses. Even the ideal is not mutual. Apart from the disparate consequences of refusal, or openness of original options, this model does not envision a situation the woman controls being placed in, or choice she frames, yet the consequences are attributed to her as if the sexes began at arm's length, on equal terrain, as in the contract fiction" (MacKinnon 655).

One final depiction of the marriage is remarkable for its neat encapsulation of gender construction and the actual meaningfulness of a woman's consent, regardless of

the legal construction. Adam interprets Eve's reluctance to consent to their marriage, not as an indication of her real feelings, but rather as her participation in a mating ritual:

Yet Innocence and Virgin Modestie,
Her vertue and the conscience of her worth,
That would be woo'd, and not unsought be won,
Not obvious , not obtrusive, but retir'd,
The more desirable, or to say all,
Nature her self, though pure of sinful thought,
Wrought in her so, that seeing me, she turn'd
(8.501-7).

Adam here reinterprets Eve's "no" as a "yes", and again, Eve's "yielding" becomes synonymous with Eve's "consenting." Most disturbing—and of importance to Milton studies—is the continued persistence of reading the marriage between Adam and Eve as one of mutual free will and consent in an effort to accommodate the subordinate position of Milton's Eve. Problems in this construction, arguably, derive from the paradoxes inherent in the contractual model itself, which Milton unwittingly reproduced in his poem.

This chapter has traced the centrality of contractual theories to the legal doctrines and political and theological discourse of the first half of the seventeenth century in order to provide an alternative screen for interpreting Paradise Lost. This screen, because of its endurance as dominant ideology, has ongoing relevance. The power effects emanating from the poem are surprisingly contemporary in their exposure of a submerged critique of the social contract model.⁵⁷ Eve's relationship—or lack of one—to God evidences her difficulties in achieving full access to public discourse. As such knowledge informs consent, sometimes quite critically, Eve's experience emphasizes women's precarious relationship to the contractual model: lack of information can quickly nullify her consent or free exercise of choice, and so leave her

⁵⁷ These conclusions are based on the conclusions in Carole Pateman's The Sexual Contract, which furnishes the most radical feminist critique of social contract theory to date. In this work, Pateman provides her own re-telling of the genesis story, arguing that a marriage precedes the social contract. This marriage, as Paradise Lost so beautifully illustrates, is not structured on a contract, but rather on the conjugal or sex-right of the husband over the wife. Women do not perform the role of subjects to the agreement, but rather of objects, or gifts of exchange. For other discussions of the way in which marriage contracts served to obliterate women's ongoing relationship to the social contract, see Goodrich and Shanley. See also Schochet, "The Absence of Women." For a discussion of the extent to which Eve is figured as just such a divinely bestowed gift of exchange between God and Adam, see Nyquist.

out of the public network of contractual relations altogether. Once more finding herself relegated to the private sphere, Eve's relationship to Adam illustrates how a woman's experience there will be constructed. Because the marriage contract may well be contingent upon forced acceptance, a system of dominance and obedience, patriarchal in nature, prevails.

As Milton's writing so poignantly illustrates, the contractual arrangement, despite its rhetoric of voluntarism, does not provide the paradigm of a free agreement, but rather one of coerced participation. The genesis of the social contract resides not in mutual and voluntary agreement but rather in the forced submission of women. This scenario has continuing ramifications, as the initial story of origins creates residing social relations constructed on a hierarchical system of sexual difference. The contract thus functions as a means of normalizing the perimeters of human relationships and delineating the acceptable roles of the contractees. Social contract theory has not replaced patriarchal theory but rather subversively re-appropriated and subsumed it within its own ideology.

Ultimately, one must ask why women would even want to participate in the formation of such relationships.

Agreeing to participate in this masculinist social model, in the face of women's excluded and coerced position, is irrational. It does not enhance her autonomy, well-being or best interests. Why would Eve, self-sufficient and independent, have ever looked up from her image in the lake? Sadly, the analysis of psychological motivation by the legal theorist Robin West only too sharply exposes why: because human beings behave irrationally. They often consent to contractual transactions because of a desire to submit to authority, even to judgment and punishment, not to promote their own well-being or autonomy.⁵⁸ For a system founded upon and glorifying the principles of rational and informed consent and free will, this insight proves devastating.

⁵⁸ Robin West 415 ("It does not follow from the definition of consent that people consent to what they think will make them better off, what they think will enlarge their freedom, or what in fact will do so ... it is only contingently and not analytically true that expressly consensual states of affairs are congenial to autonomy or that they maximize the well-being of those who consent").

IV.

Paradise Enclosed and the Feme Covert

We shall see how the stalking pageant goes
 With borrow'd legs, a heavy load to those
 That made and bear him: not, as we once thought,
 The seed of gods, but a weak model wrought
 By greedy men, that seek to enclose the common,
 And within private arms impale free woman. (Carew
 15-20)

Thomas Carew's "A Rapture" inextricably weds property and women, private ownership and control, suggesting that men who enclosed land necessarily and naturally enclosed women as well. The poem voices a common paradigm of the seventeenth century, as debates about property rights often associated images of dominion and power in the land with dominion and power over women.⁵⁹ A range of discourses,

⁵⁹ For a wonderful article exploring this link in Cavalier poems and the writings of the Levellers and Diggers, see Malcolmson. Particularly relevant to my discussion are her arguments that the Cavalier poems "used enclosure as a metaphor for marriage" (as in the Carew poem from which she, too, quotes) and that the "bodies of women become analogous to and emblematic of the property whose ownership and government were in dispute in England during this period." (252) My discussion expands this metaphoric

poetic, political and religious in nature, envisioned men's relationships with their wives as comparable to men's interests in property. As one proponent of enclosure queried: "Doth not every man covet to have his own alone? Would any man admit of a partaker in his house, his horse, his oxe, or his wife, if he could shun it?" (Moore A2). Hotly contested during the period, the enclosure movement pitted local customs, equitable practices and commonly-held rights against national rules of law and individual proprietorship. The institution of marriage enclosed women within the common law system of coverture; the ramifications of which parallel that of enclosure, literally and figuratively fixing walls or restrictive boundaries around permissible gender roles and additionally limiting women's ownership of property. The debates over law, land and women would culminate by the end of the seventeenth century in changes to the division and definition of property and to women's rights in this property. The metaphor of enclosure, thus, framed and mapped paradigm shifts in parallel proprietary systems of

link to encompass seventeenth-century enclosure tracts and Paradise Lost. Contextualizing Milton's poem within the legal discourse of the period reveals that the link served as more than merely a metaphor, but also accurately described the law's parallel treatment of property ownership and marital relations.

unequal and exclusionary power. Milton's Paradise Lost, in its extended discussions of enclosed spaces and marital relations, participates in seventeenth-century struggles over both property and gender. Prelapsarian Eden embodies seventeenth century's legal reforms and anticipates the consequences of this new system. Exploring Milton's depiction of Paradise and of paradisaal marriage ultimately uncovers the poem's embedded critiques of the enclosed fields of England and of the married woman's enclosure by her husband, as both became relegated to private spheres of ownership and control.

A.

But suppose you will say, you ... become one
body, and so do use your Commons as an
inseparable spouse, to be your helper: why are
you then cuckolded by Foreigners and strangers
... indeed (while you make it a common prostitute
to every lust) how can you help it? ... were it
not better therefore and more secure to take
her home to your chamber, and keep her with a
guard ... which you may do by distinguishing each
ones part property to himself? (Moore A2)

One of the most important geographical and proprietary changes to the early modern English countryside was the enclosure of the wastelands and common fields. Topographically, enclosure transformed the land into a patchwork of geometrically precise plots, clearly separated from each other by hedges and fences. Control of the wastelands was transferred by voluntary agreement in the seventeenth century from villagers, who once held communal rights in the land, to a small percentage of landowners, who thereafter privately and exclusively owned the property. Part of the larger agricultural revolution that took place over several centuries and did not culminate until the nineteenth century, the enclosure movement participated in the rise of a developing market economy that eroded the established moral economy structured around manorial estates intended for production and sustenance.⁶⁰ By the end of the seventeenth century, "[i]ndividual property rights based on written title replaced ancient custom ... A conception of land as a commodity to be exploited for profit, protected by absolute

⁶⁰ For background on England's change from a moral economy to an "economy of sales and exchanges," see Appleby 52-72.

rights of ownership, had triumphed over an older one under which ancient custom had guaranteed rights of access and use by the community" (Underdown, Rebel, Riot and Rebellion 284).⁶¹ The bounded fields emblemized the end of feudal notions of land ownership and the beginning of a new era, one in which we still live, that privileges the private rights of individuals over the collective rights of communities.

Upon the execution of King Charles I, Parliamentary agrarian reforms and legislation were sweeping and included not only enclosures, but also the drainage of fens, disafforestation, sequestrations and confiscations, compositions expropriations, forced sales of estates and rent increases.⁶² Political debates raged throughout this period over the propriety of agrarian legislation and who should acquire rights in crown, church, royalists', waste and common lands subjected to such legislation.

Milton participates only tangentially in these debates, although he clearly supported reforms that protected the private ownership of property. His arguments

⁶¹ For background on the enclosure movement, see Slater; Overton; Yelling; Allen; Kerridge and Thirsk V.ii.

⁶² For background on the agrarian legislation of the Civil War, see Hill, Puritanism and Revolution 153-96.

against tithes, for example, stress the injustice of "seis[ing] out of mens grounds, out of mens houses thir other goods" (7: 296). He also offers a critique of James Harrington's economic reform, as articulated in Oceana, that called for limitations on the value of individual estates. Milton argued that his own plan "requires no perilous, no injurious alteration or circumscription of mens lands and proprieties" (7: 445). He shared with proponents of agrarian reform an interest in improving wastelands. In Of Education, addressed to his friend, Samuel Hartlib, a supporter of enclosure, Milton emphasized that reading the classical authors of agriculture would "be an occasion of inciting and inabling men hereafter to improve the tillage of their Country, to recover the bad Soil, and to remedy the waste that is made of good" (2: 389). He rarely suggested specific economic or agricultural improvements in his prose tracts, but in Proposalls of Certaine Expedients for the Preventing of a Civill War Now Feard & the Settling of a Firme Government, he specifically advised that should the government provide for "the just division of waste Commons... the nation would become much more industrious, rich and populous" (7: 338).

Political arguments over agrarian reform commonly resorted to Scripture and "deeply rooted religious

rationale[s]" to justify their positions (Appleby 63). For example, certain radical sects, such as the Diggers, blamed the fall for a system of private property ownership and envisioned the earth as a "common Treasury" (Winstanley 315). Thomas Rainsborough, in contrast, assured Henry Ireton during the Putney Debates that the Levellers did not seek to destroy the system of private property, as it was firmly rooted in the biblical commandment, "Thou shalt not steal" (Woodhouse 59). Royalists and anti-enclosure tracts bewailed the loss of "Eden," as the countryside, parceled out to the few, led to the depopulation of villages, emigration, homelessness, day-labour and poverty (Low, "Agricultural Reform" 65 and Appleby 52-72). Improvers seeking to encourage enclosure (referred to in one such tract as "commonwealths-m[e]n" [Standish A4b]) made the connection between Paradise and England explicit, arguing that:

It was once Adam's happiness... to dress the Garden, and ... it was his great unhappiness to be thrust out into the large field of the World ... What's the matter with us in England, that we labor not to remove the curse, and reduce those large briary and thorny Commons ... if not into a

Paradise, yet into pleasant Gardens, goodly
fields of Corn, feeding pastures for all sorts of
Cattel" (S.T. 6).⁶³

The prevalence of the Genesis story to enclosure debates invites a consideration of whether Milton's Paradise Lost, the definitive reading of the Genesis story in the period, participates in these debates, and, if so, how the poem constructs the ideal proprietary order. Strikingly, the topographical descriptions of Paradise bear a marked resemblance to the newly bounded pastures of England.⁶⁴ The poem repeatedly stresses the "hallowd limits" (4.964) and "narrow room" (4.207) of the garden, "all bound / Of Hill or highest Wall" (4.181-82). In three separate instances, the poem specifically refers to

⁶³ For further references to Paradise and to divine calls to enclose property, see Moore, 2; Lee 28; and Blith 3. For a brief discussion that ties the rhetoric of agricultural reform and rural labour to envisioning a new "Eden rais'd in the wast Wilderness," see Low, "Agricultural Reform" 67.

⁶⁴ I am grateful to Jackie DiSalvo's observation that Paradise Lost operates as "the great enclosure tract of the seventeenth century," a suggestion that the following discussion develops and supports.

Paradise as enclosed.⁶⁵ Adam describes the prospect of the garden as: "A woodie Mountain; whose high top was plain,/ A Circuit wide, enclos'd, with goodliest Trees" (8.303-4). He also depicts the property as comprising both the organized, cultivated space of a garden (complete with "flowrie Arbors" [4.626], "Planted, with Walks, and Bowers" [8.305]), and a "field" [5.292], rather than a waste area of uncertain usages. Satan too refers to the garden as an "enclosure wild" (9.543). The enclosures themselves are legion. Satan

to the border comes
Of *Eden*, where delicious Paradise,
Now nearer, Crowns with her enclosure green,
As with a rural mound the champain head
Of a steep wilderness, whose hairie sides
With thicket overgrown, grottesque and wild,
Access deni'd; ...
Yet higher then [the trees'] tops

⁶⁵ For the definitive analysis of the Scriptural tradition of the garden enclosed, or *hortus conclusus*, see Stewart 31-59. Assuredly, as Stanley Stewart has emphasized, this trope informs seventeenth-century poetic descriptions of gardens. Nevertheless, this trope arguably represents only a partial understanding of the historical nuances of Paradise Lost's topography.

The verdurous wall of Paradise up sprung: ...
 And higher then that Wall a circling row
 Of goodliest Trees ...

(4.131-37, 142-43, 146-47; emphasis added). The poem then frames Paradise not with a simple divider but with layer upon layer of thicket, hill, wall and tree, all designed to create inaccessible borders.

The poem contrasts Paradise with all that rests beyond its idyllic bounds. Immediately outside Paradise stretches Eden, a "rural seat of various view" (4.247), comprised of "open field" (4.245) and "Bowrs" (4.246), "wood" (4.538), "Hill and Dale and Plain" (4.243). Importantly, Eden, unlike Paradise, includes "waste" (4.538) lands, a subtle example of the poem's implicit favoring of enclosed spaces of certain usage. The most important alternative proprietary order compared to the privately enjoyed and enclosed Paradise is the publicly accessible hell, a landscape described as "waste and wild" (1.60). Satan maintains that all should hold non-exclusive interests in hell: God "gave it me, / Which I as freely give" (4.380-81). Rather than seeking to exclude individuals from hell, Satan seeks to provide common and unlimited rights of access:

... Hell shall unfold,
 To entertain you two, her widest Gates,
 And send forth all her Kings; there will be room,
 Not like these narrow limits, to receive,
 Your numerous offspring" (4.381-85).

Satan does not confine this vision to hell, as he also seeks to obtain free admittance to the earth, "either with Hell fire / To waste his whole Creation, or possess / All as our own" (2.364-66; emphasis added). He reiterates this goal of "Wasting the Earth" (2.502), drawing once again upon an agrarian term in dispute within the period. The poem describes his sins themselves as "transgressions" (4.879), that is, etymologically, the crossing of boundaries or the failure to remain "bound" (4.897) by the will of God. As God describes, "our adversarie, whom no bounds / Prescrib'd, no barrs of Hell, nor all the chains / Heapt on him there, nor yet the main Abyss / Wide interrupt can hold" (3.81-84).

By juxtaposing satanic boundlessness to divine boundedness, the poem unequivocally privileges the enclosed. Notably, feminist legal scholars have characterized the system of enclosed and privately owned

property as "founded primarily on the right to control and exclude; and 'right' itself—the right way of doing things" (Margaret Davies 376). Raphael's description of God's creation encapsulates both of these uses of the word "right," envisioning the universe as limited spaces of certain ownership and of their intrinsically just nature:

He took the golden Compasses
 ... to circumscribe
 This Universe, and all created things: ...
 And he said, thus farr extend, thus farr thy bounds,
 This be thy just Circumference, O World" (7.225-27,
 230-31).

The careful attention to demarcating the rightful perimeters of the world has a contemporary analogue in seventeenth-century surveying manuals that increasingly stressed the landowners' need to know the proper limits of their property rights (McCrae 49). "Spatial techniques, new forms of mapping and measurement, are fundamental to the development of modern law, making possible and necessary the rule of law in the construction of ownership" (Bottomley 119). God's "golden Compasses" prefigure those innovative surveyors' tools used in the seventeenth century

to measure property systematically and to clarify boundaries. Milton also relied on this figure in The Reason of Church-Government to stress the right nature of bounded property: "The state also of the blessed in Paradise, though never so perfect, is not therefore left without discipline, whose golden surveying reed marks out and measures every quarter and circuit of new Jerusalem" (1: 752). Interestingly, these passages also echo Sir Edward Coke's often-quoted argument that individual rights and obligations, like property itself, should "be measured by the golden and straight metawand of law, and not the uncertain cord of discretion."⁶⁶ The new surveyor's measure, more precise at parceling out individual units of property, thus, also serves as an apt metaphor for the increasingly systemized common law, that, as the next section will argue, stressed private ownership of property.

The poem describes Adam and Eve's bower as the most enclosed of the bounded spaces within Paradise:

... it was a place
 Chos'n by the sovran Planter, when he fram'd
 All things to mans delightful use; the roof

⁶⁶ Coke, quoted in Blomley 93. For further discussion of this quotation, see Bottomley 120.

Of thickest covert was inwoven shade
 Laurel and Mirtle, and what higher grew ...
 Fenc'd up the verdant wall (4.690-95, 697).

Here, the poem subtly alludes to the gendered nature of place, as the term "covert" suggests the system of coverture of which men made "delightful use" in the early modern period (as described more fully in section C below). In the physical description of the bower, the reader surveys the walling off of the private from the public sphere at its genetic moment. The historical birth of the separation, or sequestration, of the private from the public sphere has been dated to the early seventeenth century. As former Master of the Rolls, Lord Evershed explained: "It was in the year 1604, not far removed from the date that Shakespeare wrote the lines from The Taming of the Shrew ["I will be master of what is mine own: / She is my goods, my chattels; she is my house, / My household stuff, my field, my barn, / My horse, my ox, my ass, my anything"⁶⁷] ... that, according to [Sir Edward] Coke's report of the judgement in Semayne's Case, it was judicially laid down that the house of everyone is to him as his castle and

⁶⁷ Shakespeare, The Taming of the Shrew III.ii.227-30.

fortress" (xv).⁶⁸ As feminist legal theorists have argued, this construction of private space serves not only to wall in its inhabitants, but also to wall off any scrutiny, regulation or legal protection of its inhabitants from the outside world (Taub and Schneider 151-57; O'Donovan 10-20).⁶⁹

Paradise Lost dramatizes this process, as

... other Creature here
Beast, Bird, Insect, or Worm durst enter none;
Such was thir awe of Man. In shadier Bower
More sacred and sequesterd, though but feign'd,
Pan or Sylvanus never slept (4.703-7).

So, too, the "steep wilderness, whose hairie sides / With thicket overgrown ... / Access denied" (4.135-36) conceals

⁶⁸ For a discussion of this quotation, see O'Donovan, "The Male Appendage" 141.

⁶⁹ For an early example of the law's refusal to invade the private sphere and, more insidiously, its ruling that the private sphere's governance is ultimately determined by the husband alone, see the case of Manby v. Scott (1663) reproduced in A Treatise of feme covert 193, 195 ("What a Judicature is set up here, to decide the private Difference between Husband and Wife? ... the Law makes no Person Judge thereof, but the Husband himself; and in these Cases, no Man is to put his Hand between the Bone and the Flesh").

and sequesters Paradise. By blocking views into the bower and into Paradise itself from the other vantage points of Eden, the "natural"⁷⁰ boundaries serve to isolate the inhabitants in a zone not only of protection, but also of non-regulation, save the divine. God's panoptical, all-seeing vantage point situated at the center "in his Meridian Towr" (4.30) permits the only full perspective of Paradise.⁷¹

Enclosure, as argued previously, is constructed on a notion of exclusion, on the right to control absolutely what resides within its borders and the converse right to "exclude" (4.584) those deemed not to have a right to enter. The poem does not describe these rights as coming naturally. Rather, the "secure" (4.791) and "inviolable" (4.843) Paradise requires vigilant defense. Satan attributes his eventual success to the garden's vulnerability-- "ill secur'd" (4.370), because "Ill fenc't for Heav'n to keep out such a foe" (4.372). The poem

⁷⁰ I use the word "natural" here to gesture to arguments used in the early modern period to justify women's relegation to the private sphere as the "natural" consequence of women's inferiority and their consequent need for protection.

⁷¹ The stress on God's panoptical vision derives from Michel Foucault's discussion of the panopticon. Michel Foucault, Discipline and Punish 195-228.

emphasizes the militaristic nature of the defense of the garden's boundaries, depicting the angels, at "strictest watch" (4.783), standing "arm'd / To thir night watches in warlike Parade" (4.779-80). When faced with Satan's entry into the garden, the angels use fear (or "awe" [4.705]), intimidation and "threats" (4.968) of physical violence to accomplish their charge. Ithuriel first acts violently, "with his Spear / Touch'd lightly" (4.810-11) Satan, while the "guards" stand close "in squadron joind / Awaiting next command" (4.862, 863-64). When Gabriel, described by Satan as a "limitarie cherub" (4.971) speaks, he employs the rhetoric of enclosure, censoring Satan for having "broke the bounds prescrib'd / To thy transgressions" (4.878-79). The angels further emblemize the workings of enclosure, as they finally "began to hemm him round / With ported Spears" (4.979-80). This confrontation culminates, as Richard J. DuRocher has noted, in an extended simile comparing the angels' formation to a "field" (4.980), thereby directly alluding to the processes of enclosure (103-04).

The militaristic language used to describe the guarding of Paradise suggests that a discourse of imperialism lies submerged within the politics of this

enclosure.⁷² As W. J. T. Mitchell has argued in a discussion of the semiotic features of landscape painting, the "Enclosure movement ... [is] an internal colonization of the home country, its transformation from what Blake called 'a green & pleasant land' into a landscape" (17).⁷³ To Gillian Rose, landscape constitutes a "visual ideology," encompassing understood hegemonic cultural codes that are themselves embedded in social power structures (90-99). The poem describes Paradise as a "Lantskip" twice (4.153, 5.142), thus, arguably, participating with landscape painting, a genre that interestingly emerged in the seventeenth century, in the conveyance and enforcement of colonizing values and power structures. The poem, as this discussion has maintained, depicts as originary, and therefore idyllic, a landscape enclosed within clearly demarcated boundaries. Yet, "[t]he boundary metaphor

⁷² For a parallel discussion of the defensive strategies of Paradise and Milton's belief in the "division of space via property rights," see McLeod 63. McLeod, however, characterizes Milton's conception of space and Paradise as "'evok[ing] not enclosure but panorama'" (64, quoting Fitter 301). See also Evans, that reads the occupants of the garden as governed by natural law and, therefore, the "concept of private property is as alien to them as it was believed to be to the native Americans" (96).

⁷³ See also Bermingham 77-101.

permits us to indulge in focusing on the experiences we can have in, on, and with our property ... and ignore the patterns of relationship shaped by the power to exclude," ones that ultimately require "power and domination" (Nedelsky 177, 180). Because Milton's poem depicts this bounded, and therefore idyllic, landscape as necessitating dominating and violent tactics to ensure its boundaries, the poem not only incorporates a changed vision of property distribution within its boundaries but also dramatizes the underlying power effects of this vision.

B.

Concurrent changes in the legal definition of landed property in the seventeenth century made possible the changing economic division of property ownership, signified by the increasingly enclosed commons. This legal meaning increasingly constructed property as a "public" rather than a "private resource," consistent with the socio-economic changes from a feudal to a market economy.⁷⁴ The 1624 edition of John Rastell's treatise of legal terms, Les

⁷⁴ For background on these changes, see Appleby 101; McCrae 56 and Low, "Agrarian Reform" 65.

termes de la ley, first announced a definition of property that comprehended the notion of absolute, not merely possessory, rights in land. Rastell defined property as "the highest right that a man hath or can have to any thing, which in no way dependeth upon another mans courtesie" and divided property rights into three categories—"absolute," "qualified" and "possessory" (fo.261.r-v).⁷⁵ Nevertheless, this definition remained restricted to rights, that is, uses or interests, in and not ownership of land, consistent with the feudal understanding that "none in our kingdom can be said to have in any lands, or tenements, but only the king in the right of his Crowne. Because all the lands through the realme, are in the nature of fee, and doe should either mediately or immediately of the Crowne" (Rastell fo.261; Aylmer 90-91). The Long Parliament's 1646 Ordinance abolished wardship and other royal feudal tenures thereby dismantling this restriction on private ownership of property.

Thereafter, legal commentators began to give accounts

⁷⁵ For helpful background on the changing definition of property in the period, see Aylmer; and Reeve. For the classic delineation of what rights, entitlements and duties attend private property ownership, see Honore. For background on the concurrent political thought concerning property rights, see Horne.

of the standard incidents, that is, the rights and entitlements, of ownership. They interpreted "the highest right" in property as including the unqualified and exclusive privilege to: possess; enjoy; use and derive all income from the property; manage the property, including the power to decide who has license to use the property; and dispose or alienate the property (Honore 92). These commentators also understood such interests as "gained by Industry (Zouche; Aylmer 92)," rather than simply by feudal privilege. The confirmation of the abolition of wardship and feudal tenures at the Restoration in 1660 further confirmed a vision of property as individually owned and controlled. Interestingly, by the early eighteenth century, Lockean political defenses of private property began to appear in legal terminology, concluding that "Every man ... hath a Property and Right which the Law allows him to defend his Life, Liberty, and Estate; and if it be violated, it gives an Action to redress the Injury, and punish the Wrong-doer" (Lilly 399-402; Aylmer 95). The language of absolute and private property ownership thus constituted a sweeping paradigm shift, both encoding and delimiting a perceptual change in the social customs and values of seventeenth-century England.

By interrogating the particular construct of property

articulated in Paradise Lost, one can glimpse how the poem itself encloses the concurrent paradigm shift within its boundaries. The seventeenth-century emerging notion of private property ownership operates as the relevant model for evaluating Adam's relationship to the land. The land until Adam's creation corresponded to pure common ground, as no creature in the community was forbidden to trod there. Upon God's transfer of the land, Adam became its absolute owner. The poem's grant of property rights, it should be emphasized, goes far beyond that of the biblical account that gave man the right to "subdue" and "rule ... over all the earth, and over every thing that creepeth & moveth on the earth" (Gen. 1.28, 1.26).⁷⁶ In Milton's poem, God grants the property to Adam in language that directly implicates the seventeenth-century legal definition of proprietary ownership. As Adam relates, God stated:

This Paradise I give thee, count it thine
To Till and keep ...
Not only these fair bounds, but all the Earth

⁷⁶ All biblical references are to The Geneva Bible (1650 edition) and are cited parenthetically in the text.

To thee and to thy Race I give; as Lords
 Possess it, and all things that therein live
 (8.319-20, 338-40).

Likewise, Michael tells Adam:

All th' Earth he gave thee to possess and rule
 No despicable gift; surmise not then
 His presence to these narrow bounds confin'd
 Of Paradise or *Eden*; ...
 God is as here, and will be found alike
 Present, and of his presence many a signe
 Still following thee, still compassing thee round
 (11.339-42, 350-52).⁷⁷

Adam also has "power and rule" (4.429) and "Dominion" (4.430) over Eden, "Free leave so large to all things" (4.434). His rights in Paradise are even characterized as "absolute" (4.301), consistent with the seventeenth-century notion of ownership of, rather than merely qualified or possessory rights in, the property.

⁷⁷ It is worth noting that the notion of God "compassing thee round" implicates the discourse of enclosure, providing another example of the centrality of this metaphor to an interpretation of the poem.

The land transfer also rests on a reciprocal duty on Adam's part, that is, God gave Adam ownership of Paradise in exchange for Adam's promise to tend it and his ancillary promise not to trespass on that part of the property, the tree of knowledge, still retained exclusively by God. Adam obtains exclusive proprietary rights in these previously common grazing lands, then, through voluntary, contractual means, requiring reciprocal duties from both parties, consistent with the legal understanding that one should gain ownership of property "by Industry," rather than privilege alone. The contractual nature of this transfer corresponds historically to the voluntary nature of enclosure in the seventeenth century, as only in the eighteenth century did enclosure occur through involuntary acts of Parliament (Michael Turner). One can understand Adam's and Eve's exile from the garden after the fall, then, not simply as divine punishment but also as God's revocation of the property agreement and confiscation of the property in light of Adam and Eve's failure to keep the terms of their agreement. Thus, upon the fall, "The Princely Hierarch / In their bright stand, there left his Powers to seise / Possession of the Garden" (11.220-22). Michael further supports this reading by advising Adam that, though he has lost his ownership of the garden, he

still retains ownership of the rest of the world (11.339-42).

Adam also gains those incidental rights in the land consistent with ownership, including control over its use. Adam can exclude others from the land and restrict others' admittance to the land. In effect, one can read the separation scene in Book 9 as an extended negotiation for and achievement of a license, as Adam grants Eve access rights to certain parts of his territory. She frames her offer to work separately in rhetoric consistent with the legalistic language of a license agreement. She requests to gain admittance only to a specific area of the property for only a limited duration of time, while simultaneously acknowledging that he has fuller access rights to all of the garden:

Let us divide our labours, thou where choice
 Leads thee, or where most needs, whether to wind
 The Woodbine round this Arbour, or direct
 The clasping Ivie where to climb, while I
 In yonder Spring of Roses intermixt
 With Myrtle, find what to redress till Noon"
 (9.214-19).

Eve disputes in proprietary terms Adam's initial reluctance to grant her such license: "If this be our condition, thus to dwell / In narrow circuit ... / How are we happie" (9.322-23, 326). She characterizes Adam's eventual acceptance of this license as his having granted her "permission" (9.378), again relying on the legal language of property licensing.

The poem, in contrast, describes Satan's entry into the garden as "Unlicenc't" (4.909), likening it to an "assault" (4.190) by a "Thief" (4.188). So, too, the poem describes Eve's taking of the fruit from the tree of knowledge as a "fatal Trespass" (9.888), as does Satan (9.693), as does God (3.122). These legal terms—unlicensed entry and trespass—were intimately tied to changing notions of property ownership in the late seventeenth century. The courts no longer considered the admittance onto common fields as the customary right of a villager, but rather associated it with an illegal intrusion onto private property. By the end of the seventeenth century, causes of actions and prosecutions for trespass, not surprisingly, multiplied at an unprecedented rate, in keeping with the heightened emphasis on private ownership in the period. These prosecutions could also prove "fatal" indeed, as the judicial system deemed trespass a capital punishment

(Thompson). Legal historians have characterized the paradigm shift from a feudal to a market economy as accompanied by a parallel shift in perceptions of the main purpose and goal of criminal law. By the early eighteenth century, the justice system no longer concerned itself primarily with regulating order and preserving religious conformity but became concerned mainly with the defense of property (Sharpe 149-50). The Black Act of 1723, that created approximately 250 categories of property-related crimes, represents the apotheosis of this paradigm shift.⁷⁶ Milton's poem, in its characterization of Satan's and Eve's crimes, then, anticipates and participates in the shift to a view of government, in John Locke's words, as having "no other end but the preservation of property" (347).

Consistent with nascent agricultural improvement ideas and changing views of husbandry, Adam also has the obligation (the "easie charge" [4.421] and "delightful task" [4.437]), not merely the right, to improve his property. As he directs Eve: "With first approach of light, we must be ris'n,/ And at our pleasant labour, to reform/ Yon flowrie Arbors" (4.624-26). His discussions with Eve repeatedly center on such reform, enrichment and

⁷⁶ For the definitive study of the Black Act, see Thompson.

improvement of the property's natural resources. Anthony Low, in The Georgic Revolution, a study of the georgic influences of the poem, discusses the extent to which the depiction of Adam's improvements and work also corresponds to the period's changing models of agrarian reform and husbandry. The term "husbandry" is an important one in the context of this essay, suggesting once again that men's marital and proprietary relations were somehow comparable. The following discussion will interrogate to what extent Paradise Lost concurs with this analogy.

C.

A garden enclosed is my sister, my spouse: a
spring shut up, a fountaine sealed ("The Song of
Songs" 4.12).

Milton's poem juxtaposes the private and exclusive relations between humans to the communal and unbounded relations between animals: "Hail wedded Love, mysterious Law, true sourse / Of human offspring, sole proprietie / In Paradise of all things common else" (4.750-52). By linking marriage, law and property, the poem encodes a vision of marriage as a legalistic and proprietary relation over

which mankind has absolute rights of ownership. This frame, then, invites an analysis of how the laws of marital relations interpolate the laws of property within Paradise Lost.

The poem encloses the marital relation within the legal framework of coverture, or unity of person, as Adam recalls having uttered to Eve upon her creation: "And they shall be one Flesh, one Heart, one Soul" (8.499).⁷⁹ Here, Milton undoubtedly reproduced the language of Genesis ("Therefore shal man ... cleaue to his wife, and they shall be one flesh" [Gen. 2.24]); yet, one should read the phrase "one flesh" as referring not only to its canonical interpretation, including as James Turner, among others, has so beautifully articulated, its often contradictory exegesis, but also to its legal interpretation, so critical to the very basis of the relationship between husband and wife from the thirteenth century through the early modern period. As other critics have analyzed, Adam understands Eve's status in proprietary terms. He describes her as "Heav'ns last best gift" (5.19) and the "fairest this / Of all thy gifts" (8.493-94) (see Nyquist 172, 180). This

⁷⁹ For Milton's explication of "And they shall bee one flesh," see Tetrachordon 2: 605-14.

designation conforms to such seventeenth-century customary practices as wife sale and, more tellingly, to the strictures of coverture (property cannot own property).

The legal framework of coverture itself imbues the poem. First 'covertly,' in the Narrator's description of Eve's "vail" (4.304) of hair "which impli'd / Subjection" (4.307-8) and more forcefully in Eve's description of women's legal status, one that, it should be noted, accurately reflects women's foreclosure from participation in the law during the seventeenth century: "God is thy Law, thou mine" (4.637). Adam's descriptions of their marital relations likewise rely on the discourse of coverture, seeming to replicate the language of legal commentators:

leave not the faithful side
That gave thee being, still shades thee and
protects.
The Wife, where danger or dishonour lurks,
Safest and seemliest by her Husband staies,
Who guards her" (9.265-70).

Yet, it is Milton's deviation from coverture's practical effects on married women's ownership of property that operates as one of the most compelling arguments in favor

of a reading of the poem that emphasizes not Milton's patriarchal but rather his more egalitarian vision of gender relations. Milton both records the legal inequities of the system of coverture and a critique of this system.

The poem constructs Eve's equal access to proprietary rights in the land ambiguously. In Adam's rendition of his creation, God's grant of the property occurs prior to Eve's creation. Her absence thereby problematizes whether one can understand her as a party to, or the beneficiary of, this land transfer. Nor does she provide an alternative account of her creation that would mediate the seemingly exclusive and private nature of the grant to Adam. She, instead, confirms that Adam alone is "all Earths Lord" (9.273). Adam does indicate that Eve shares in the possession of the property: "Two onely, who yet by sov'ran gift possess / This spacious ground" (5.366-67). As legal commentators made clear in the period, however, possessory rights in property did not constitute absolute ownership of the property. Adam also states in a discussion with Eve:

God hath proncunc't it death to taste that Tree,
The only sign of our obedience left
Among so many signes of power and rule
Conferrd upon us, and Dominion giv'n

Over all other Creatures that possess
Earth, Air, and Sea" (4.427-32).

Yet, here, while emphasizing that he and Eve share in dominion over the animals, he does not directly address the issue of their ownership rights in the property.

Raphael's account of the property transfer from God to Adam does not lead to a more definitive understanding of Eve's participation either. As Raphael states, God spoke to his son:

Let us make now Man in our image, Man
In our similitude, and let them rule
Over the Fish and Fowl of Sea and Air,
Beast of the Field, and over all the Earth,
And every creeping thing that creeps the ground"
(7.519-23).

This language faithfully recites Genesis (1.260). The term "Man," as critics have emphasized, is used to refer to a plural "them" (7.520) and functions as gender neutral both in this passage and in Genesis, thereby incorporating

"woman" within its meaning.⁸⁰ Yet, rule over the animals of the earth, once again, does not necessarily imply ownership of the property itself. Nevertheless, other passages in the poem also refer to Adam and Eve in the plural as "lords" (8.339), "lords of the world" (1.32) and "lords of all" (4.290, 9.658). This repeated use of the plural is particularly significant, seeming to disagree with Eve's characterization of Adam as "all Earths Lord" (9.273). Ultimately, however, the poem never explicitly states that God has granted Eve ownership rights in the property equal to those of Adam.

Nevertheless, her position does not correspond to that of the *feme covert* or married women in English seventeenth-century law, foreclosed by the doctrine of coverture from holding any rights in property at all during her marriage. Indeed, the poem depicts one parcel of the property, the "Nurserie" (8.46) as owned exclusively and unequivocally by Eve. She "Rose, and went forth among her Fruits and Flowrs, / To visit how they prosper'd, bud and bloom, / Her

⁸⁰ See, for example, James Turner 13, 217; and Wittreich, "'Inspir'd with Contradiction'" 137-41. However, some feminist scholars have contested this interpretation. See, for example, Bender 61 ("The claim that the masculine terms 'he' and 'man' are generic becomes suspect when we realize that our language does not provide generic feminine terms as well".)

Nurserie" (8.44-46; emphasis added). This characterization explicitly characterizes her private and exclusive ownership rights in the property. The poem also depicts Eve as primarily responsible for tending the flowers of Eden. She is variously described as nurturing, pruning, watering, supporting and improving the flowers,⁸¹ providing further indicia of her incidental rights in the property consistent with the seventeenth-century definition of legal ownership. The "Nurserie," then, represents a sphere that the poem has carefully carved out as Eve's individual and absolute property.

This instance of the poem's mitigation of the harsh consequences of coverture in fact transcends even the most liberalizing legal development of the late seventeenth century. Enforced only in the equity courts and not recognized by the common-law of England, trusts for the sole and separate estate of *femes covert* became a method for women to retain some access to capital in their property that would otherwise, under coverture, have fallen into their husbands' control. Throughout the latter half of the seventeenth century, individuals utilized these

⁸¹ For the strongest renderings of this argument to date, see McColley, A Gust for Paradise 127-28; and McColley, Milton's Eve 110-39.

increasingly complex agreements to protect the individual property rights of *femes covert* during their marriages. *Femes covert*, as mere beneficiaries of such trusts, however, did not have direct control over or ownership rights in the property, as these rights legally resided with the trustees. Eve, then, has a degree of ownership in property that a seventeenth-century *feme covert* would have found unattainable even using the most sophisticated trust arrangements. Milton's poem, by envisioning such female control over property, erodes the restrictive covering of coverture and offers a radically novel vision of property ownership.

Importantly, Eve also names the flowers: "O flowrs / ... which I bred up with tender hand / From the first op'ning bud, and gave ye Names" (ll.273-77). One can interpret Eve's naming of the flowers, generally used by critics as indicia of her innate reason and of Milton's elevation of her status (see, for example, McColley, Milton's Eve 113 and Lewalski 8), as further evidencing her proprietary rights in the "Nurserie." Parallel to the privilege granted to engrafters to name their hybrids, Eve's ownership of the flowers entitles her to name them. Eve's naming of the flowers also comprises an important concept critical to feminist legal theory. As described by Ann C. Scales,

through the process of "Naming," "we discover what we really think and express it, we give words and the world new meaning... For us, 'Naming' is a political term. 'Naming' means rejecting the Adam myth that the world was made for males to discern; it means reclaiming our world and our own experiences" (55, fn. 17).⁸² Eve's naming, then, not only constitutes an explication of the vagueness of Genesis but also anticipates a contemporary critique of the originary myth's link to patriarchy. Milton's poem grants Eve proprietary rights that, while not unequivocally equal to those of Adam, were absolute and individual to her. The poem thereby "rejects the Adam myth" as forcefully as it re-tells the myth, or, alternatively it incorporates an "Eve myth" alongside the "Adam myth."

* * * * *

⁸² See also Bender 61 ("Men have had the power of naming our world, and giving our words meaning. Naming controls how we group things together, which parts of things are noted and which are ignored, and the perspective from which we understand them... Our language is a male language that reinforces male perspectives, interests, and hierarchies of values").

To have been one
 Of many ribs
 And to be chosen.
 To grow into something
 Quite different
 Knocking finally
 As a bone knocks
 On the closed gates of the garden—
 Which unexpectedly
 Open.

Linda Pastan's poem, "Aspects of Eve" (1-10),
 beautifully evokes the transgressive power of Paradise
 Lost. Milton's poem depicts the "closed gates" of enclosure
 and coverture, only to "open" them, by anticipating the
 effects and future critiques of these parallel systems of
 proprietary control. The poem records the metaphors,
 arguments and language of seventeenth-century agrarian
 debates and gender politics, and "grow[s] into something /
 Quite different," in depicting the consequences of private
 property ownership and the figure of a married woman
 property holder, an individual who would not be
 historically conceived until The Married Women's Property
 Acts of 1870 and 1882 ended coverture.

This essay has approached the issue of Milton's gender construction—not as scholars have traditionally done by examining the extent of Eve's subordination and the poem's articulation of patriarchal attitudes—but through a back gate, so to speak. Eve's actual proprietary rights in the garden mitigate the language of female inferiority embedded in both the poem and the legal framework of coverture. Milton's poem tests the boundaries of this construct, and ultimately, "unexpectedly," breaks through them to give place and space, even if only covertly, to myths of both Adam and Eve.

V.

Dalila's "feminine assaults":**The Gendering and Engendering of Crime in Samson Agonistes**

"[L]et all England, or all the world judge."

The above-pronouncement of Lord President John Bradshaw of the High Court of Justice at the trial of King Charles I for treason in 1649 invited England (Stephen, State Trials 111), even the world, to participate at an unprecedented level in the judging and condemning of an alleged criminal. At its profoundest level, Milton's Samson Agonistes is a tragedy about this juridical process and the implications of judging and judgment. Samson, as Nazarite judge, had been granted the divine right to try, judge and rule on criminal cases. However, there is a striking dissonance between his role as judge and his position at the commencement of the tragedy as accused criminal, imprisoned as "A Murtherer, a Revolter, and a Robber" (1180). In the disparity between Samson as judge and criminal, between Hebraic and Philistine law, Milton's poem foregrounds the relativism of criminal categorizations, dependent upon historically and culturally contingent

definitions and meanings. Samson Agonistes, thus, functions as an early example of the "subjectivity", in Stanley Fish's words, of the legal system in which discretionary, rather than objective or positivist, interpretation underlies judicial decision-making.⁸³

Yet, the drama seems to insist on certain immutable laws, those "of nature, [and] the law of nations" (890) that govern gender relations. This conclusion seems amply supported by Samson Agonistes, in Samson's vilification of Dalila and her final speeches, and particularly in the Chorus' conclusion ("Gods universal law / Gave to the man despotic power / Over his female" (1053-56)). The drama adjudicates this initial supposition, however, placing on trial not only the characters themselves but also the legal system itself and its gendered categorization. By examining the poem's construction of power relations in the context of seventeenth-century criminal law, it becomes apparent that these gender categorizations break down, exposed as arbitrarily and culturally produced.

Emphasizing the law-court sense of the term agon ("trial") and *agonistes* ("litigant"), Harold Skulsky has

⁸³ Fish, "Fish v. Fiss." See also Fish, "Spectacle and Evidence in Samson Agonistes" 577.

remarked that the reader of Samson Agonistes is "summoned ... to assist at a court trial" (111); "a pair of *agones* (Samson vs. Dalila and Samson vs. Harapha respectively) is the center of the drama" (101). So, too, Thomas Kranidas has noted the legalistic language of the poem, describing Dalila as a "defense attorney with a guilty client, pleading brilliantly and legally, publicly, for an outweighing of the evidence" (128). Agreeing with Skulsky and Kranidas, I would argue further that the *agon* of Milton's poem can be perceived not only in metaphoric but also in historically grounded terms, as seventeenth-century criminal procedure provides an important frame for interpreting the dramatic interchange between Samson and Dalila.

The early modern criminal trial had a theatrical aspect, likened by Cynthia Herrup to a "multi-ringed extravaganza more than a distinct, solemn ritual" (The Common Peace 141). Judges, prosecutors and defendants alike frequently interrupted the testimony of victims and witnesses to interject their own comments, counter-arguments and questions. Progressing sometimes chaotically, even informally, trial procedure was marked by heated interchanges between the parties. This "personal interaction" has been compared to a "freewheeling Socratic

exercise" (Herrup, The Common Peace 142), as examinations more resembled loosely structured "debates" than formal presentations (Stephen, History II: 350).⁸⁴ During the altercation, the defendant had "free rein" to tell her story (Herrup, The Common Peace 141-42), but, as Cynthia Herrup described, "the prisoner's defence was made not in a set speech as at present, but by fragments in the way of argument and 'altercation' with the prosecutor and the other witnesses" (The Common Peace 349). The altercations could become quite furious, stimulating adversarial outbursts, name-calling and nasty quarrels. A late sixteenth-century case became so violent that a man was murdered in court during the trial (Marcus 683).

Inflammatory rhetoric occurred with the greatest frequency in treason trials; for example, Sir Edward Coke repeatedly insulted Sir Walter Raleigh during his 1603 trial, calling him a "viper," "a Spider of Hell," and the "notoriest Traitor that ever came to the bar."⁸⁵ Criminal procedure generally favored the prosecution, denying an alleged criminal the opportunity to prepare her defense before

⁸⁴ For further background on criminal procedure, see Baker, "Criminal Courts and Procedure."

⁸⁵ Quoted in Marcus 675. For further background on Coke's conduct during this and other treason trials, see Bowen chs. XII, XV and XVI.

trial, the assistance of a defense counsel to present her case or the calling of sworn witnesses at the hearing. She thus had to rely on her spontaneous 'performance' to convince a jury of her innocence.

The form and style of the interchange between Samson and Dalila share several attributes with the typical seventeenth-century criminal trial, as Samson accuses Dalila, in his words, of a number of "crime[s]" (842) during an inflamed altercation punctuated by strikingly similar name-calling to that used by Coke, vitriol and commands to "renounce" (828) her pleas. Dalila, in turn, "suing / For peace" (965-66), struggles to defend herself. Her narrative, structured as a defensive "plead[ing]" (833), provides her free rein to tell her story in her own words. As the parties debate Dalila's motives and the consequences of her actions, they each build a case intended to inspire a final, definitive judgment, or pronouncement of guilt or innocence. Samson and Dalila each deploy the rhetoric and strategies of the seventeenth-century judicial system, marshaling the language of criminal accusation and the maneuvers of courtroom defense.

Saturated with the technical terminology of criminal laws specific to early modern England, the substance of the exchange between Samson and Dalila is also indebted to

legal discourse. Samson's accusations and Dalila's responses constituted indictable offences and valid defenses that would have been patent to a seventeenth-century reader. Samson piles one charge upon another in an ever-widening panoply of criminal accusations that share one essential attribute- they all represent female crimes actively prosecuted in the seventeenth century which reached a peak in the years leading up to the Civil War and had become virtually extinct by the early eighteenth century. Criminal law in the early modern period was complexly "gendered"; that is, certain behavior constituted criminal misconduct only if perpetrated by a woman, with men and women often facing different punishments for the same crimes. Even some crimes, not explicitly gendered female, were implicitly so, as significantly more women faced punishment for them than men. The interchange between Samson and Dalila interrogates these gendered speech crimes, dramatizing their prosecution and punishment, as Samson manages to indict Dalila for virtually every one of them.

A systematic investigation of Samson's charges against Dalila and her defenses permits a greater understanding of the extent to which criminal law framed and influenced the drama, and, in evaluating Milton's use of this material, of

the hushed, radical discourse on the criminalization of women underlying the poem. This interdisciplinary approach serves two additional purposes. It permits a broadened sense of the generic influences of Milton's poem, including domestic tragedy and criminal ephemera, and the insights of such scholars as Catherine Belsey, Susan Staves and Frances Dolan who have explored these genres to be brought to bear on Samson Agonistes. An analysis of the poem's engagement with gendered crime finally leads to a reading of Dalila that transcends the traditional criticism, which tends to focus negatively on her character or forms definitive conclusions about her morality.⁸⁶

The emphasis on Dalila here corresponds with the period's own fascination with the criminal or deviant woman. Her crimes, inextricably tied to the transgression of gender expectations, symbolized fundamental threats to the structure of society. The state endowed her acts with a power to disrupt far beyond their actual potential primarily because of the nearly ubiquitous analogy made in the period between the family and the state ("a familie is ... a little commonwealth" [Gouge 18]) that figured

⁸⁶ The history of Dalila criticism is too extensive to list here. For a helpful early overview of this history, see Mason 23-33.

prominently in a wide range of differing discourses, including political theory, conduct manuals, sermons, catechisms, homilies and religious tracts.⁸⁷ Milton relied on this analogy in his divorce tracts, arguing that "as a whole people is in proportion to an ill government, so is one man to an ill marriage" (2: 229). The criminal justice system also made use of this analogy to explicate criminal wrongdoing. For example, Sir Edward Coke encouraged constables to report "[a]ll unlawful games, drunkenness, whoredom and incontinency in private families ... as on their good government the commonwealth depends."⁸⁸

The greatest disorder that could seize the family and, accordingly, the state was an inversion, through which the "natural" hierarchies residing within the home were reversed. As Thomas Gataker stated, "where the wife maketh head against the husband; there is nothing but doing and undoing, and so all things go backward, and the whole house runneth to ruin" (Gataker 42).⁸⁹ William Gouge even likened wifely domination to "the cause of all rebellion,

⁸⁷ On the use of analogy in the early modern period, see Amussen; Hill, Society and Puritanism 443-81; and Shanley.

⁸⁸ Quoted in Hill, Society and Puritanism 448.

⁸⁹ Quoted also in Amussen 42.

disobedience, & disloyalty" (331). This idea parallels directly the Chorus's conclusion that "[s]o shall he least confusion draw / On his whole life, not sway'd / By female usurpation" (1057-60). Dalila, the criminal woman, endowed with nearly every characteristic of female insurrection, was an easily recognizable type to early modern readers--the "woman-on-top", prosecuted and punished for her power to make "all things go "backward" or, in more common parlance, to turn the world upside-down.⁹⁰ She becomes the archetypal "league-breaker" (1209), whose familial rebellion destroyed hierarchy, leading to divine, natural, civil and political disorder. As a *feme covert*, Dalila's legal position was veiled, her marital status distorting her independent legal identity. So, too, her insubordination can be interpreted as a veiled critique of her status; and the reader, invited to judge, is finally responsible for the unveiling of this critique.

⁹⁰ On the "woman-on-top" and the world turned upside down, see Hill, The World Turned Upside Down; Underdown, Revel, Riot, and Rebellion chs. 2 and 7; Underdown, "The Taming of the Scold"; Natalie Davis 124-51; Burke; Donaldson; and Stallybrass, "The World Turned Upside Down."

A.

"Tongue-batteries" and "shameful garrulity"

A punishment invented first to awe
 Masculine wives transgressing Nature's law,
 Where, when the brawny female disobeys
 the just street does the next house invade,
 Mounting the neighbor couple on lean jade
 Prudent Antiquity, that knew by Shame
 Better than Law, Domestic Crimes to tame (Marvell
 477-81).

These lines from Andrew Marvell's poem, "Last Instructions to a Painter" describe a "charivari," one of the customary "shaming rituals," as they were known in the period, meant to punish socially stigmatized behavior. Communities implemented charivaris for infractions of social norms, marital expectations and gender roles. The central symbolism of charivaris resided in "notions of hierarchy, inversion, reversal, rule and misrule, order and disorder— the world turned upside-down. The most straightforward explanation of charivaris is that they stigmatized as ridiculous inversions of the 'natural' hierarchy" (Ingram, "Ridings" 96). Historians have

determined that the majority of charivaris took place to punish a wife's physical assault or verbal domination of her husband. Upon the witnessed occasion of abuse, the community would stage a spectacular reenactment of the anomalous behavior, sometimes using the offending couple's neighbors to perform the parts of husband and wife— with the notable difference that the wife would be dressed in the husband's clothes and visa versa. "She" would then beat "him" with a ladle as they rode through town, the center of a carnivalesque rough-music procession.

David Underdown has interpreted such incidents of gender inversion as exemplifying public anxiety about patriarchal order and gender relations, describing the period 1560-1640, in particular, as a veritable "crisis of order" (Revel, Riot and Rebellion 116-36).⁹¹ This crisis coincided with a rise in the number of criminal prosecutions brought against women who brawled against their neighbors or overpowered their husbands. The offending behavior amounted to the cognizable crime of "scolding," a misdemeanor in both the ecclesiastical and

⁹¹ For a critique of this characterization of the period, see Ingram, "Ridings."

manorial courts.⁹² To be perceived as a dominating or scolding wife had a legal significance with consequences not only of public disapprobation and contempt, but also of the threat of real physical punishment. Lynda Boose has described in horrifying terms the pain and jeopardy experienced by a disciplined scold. The cucking or ducking stool, the officially sanctioned punishment for a convicted scold, was a chair-like contraption upon which the scold sat. Officials then led her through town, the center of a charivari ritual. After such a procession, authorities would duck her over the head several times in a water source, often consciously defiling her with the mud and filth of the location. The illegal, yet oft-used, scolding bridle, a metal apparatus locked around the head with a gag, was inserted into the woman's mouth, forcibly restraining her tongue from speaking, sometimes through the use of sharp metal pins. Officials would then drag the bridled scold through town, so that, as one seventeenth-century magistrate explained, "not only the woman which had offended might be shamed for her misdemeanor towards her

⁹² For background on the crime of scolding, see Ingram, "Ridings"; Underdown, "The Taming of the Scold"; Natalie Davis 124-51; Boose; and Ingram, "'Scolding Women Cucked or Washed.'"

husband but other women also by her shame might be admonished [not] to offend in like sort."⁹³

The definition of a "common scold" was broad, its prosecution directed against both verbal nuisances of a public nature, such as the harassing of neighbors, and verbal challenges of a private nature, such as resistance to a husband's authority. To scold was synonymous with verbal abuse, "to chide and to brawl and had overtones of violence" (Ingram, "Ridings" 51). Generally, the misconduct indicated a conscious usurpation of the rules of "civil and orderly demeanor and behavior...Thus contemporaries, rightly or wrongly, perceived the accused as *wilfully refusing* to accommodate herself" (Ingram 71). Such a refusal was viewed as "so much hurtful to the society of a commonwealth, in all well ordered cities these common brawlers and scolders [must] be punished, with a notable kind of pain, as to be set on the cucking stool, pillory, or such like ... If we have forsaken the devil, let us no more devilish tongues."⁹⁴ Tellingly, accusations of scolding frequently described the woman as having been "busy with her tongue", "unruly

⁹³ Quoted in Ingram, "Ridings," 93.

⁹⁴ Reprinted in Church of England, Certain Sermons or Homilies 154, also quoted in Boose 186.

tongued" or "unquiet", emphasizing how far the woman's verbal abuse had strayed from the ideal of silence (Ingram 68).

Dalila, outspoken advocate of female "public" action and so busy with her tongue that she managed the utter ruin of her husband, is the literary personification of the scolding wife. Indeed, Milton seems to have gestured consciously to the crime of scolding. Samson describes Dalila as having wrested Samson's secret from him after repeated attacks on his "fort of silence" (236), "vanquisht with a peal of words" (235). He employs, as Jackie DiSalvo has noted, militaristic language (DiSalvo, "Intestine Thorn" 221),⁹⁵ emphasizing Dalila's aggressive, and therefore transgressive, conduct. Samson complains of the repetitive nature of her nagging, "she surceas'd not day nor night" (404), and her willfulness: "How openly, and with what impudence / She purpos'd to betray me" (398-99). Milton directly alludes to the crime of scolding and to the moment when Dalila's nagging rose in Samson's mind to the level of criminal behavior: "Yet the fourth time, when mustering all her wiles / With blandisht parlies, feminine assaults, / Tongue-batteries... To storm me over-watch't and

⁹⁵ See also DiSalvo, "Make War Not Love" 209.

wearied out" (402-06; my emphasis). Milton has here recorded in microcosmic form the elements of a successful action for scolding— repeated and willful verbal assault and battery by a wife against her husband.

Tellingly, Dalila does not face punishment for the crime of scolding. Yet, one must ask why Milton would so explicitly have framed Dalila's actions in the figure of the common scold and throughout the poem have so foregrounded the issue of wifely domination, if only to shy away from condemning her. Only by focusing on Samson, the subordinated husband in this upside-down world of gender inversion, can one begin to form conclusions.⁹⁶ The procedural mechanism by which individuals were indicted for scolding began by their presentment, usually by a neighbor or the spouse, before the constabulatory as a "*garrulatrix*," one of the latinate legal designations for a scold (Ingram, "Scolding Women" 53). This legal designation sheds an altogether new light on Samson's self-incrimination: "my crime, / Shameful garrulity. To have reveal'd / Secrets of men" (490-91). Samson, here, convicts himself of scolding on the basis of volubility

⁹⁶ For other discussions of Samson's feminization, see, for example, DiSalvo, "Intestine Thorn"; DiSalvo, "Make War"; and Mary Beth Rose.

alone and explicitly sentences himself to experiencing shame, the established punishment for scolding. Samson further situates the significance of this misconduct in its consequence of social ostracism: "how deserving / Contempt, and scorn of all, to be excluded / All friendship, and avoided as a blab" (493-95). Historians have documented the very real consequences of ostracism for scolding. Early on, convicted scolds were sometimes banished from their towns, and later cases indicate that banishment also occurred voluntarily after prosecution (Ingram, "Scolding Women" 57).

Historians have only found a scattered number of cases of scolding brought against men, and as William Blackstone noted, "our law-latin confines [scolding] to the feminine gender" (IV: 1169). Witnesses in scolding cases frequently made the connection between the crime and gender explicit by charging accused scolds with "uncivil and unwomanly" behavior" (Ingram, "Scolding Women" 67). The regulation of appropriate female behavior in Samson Agonistes has been turned back upon itself— a gendered crime applied to the opposite sex citing to qualities befitting, once again, the other sex in a topsy-turvy, near carnivalesque distorting of the crime.

Samson's garrulity takes on ominous overtones, as the

constable finally leads Samson through the streets
 "doff[ed]" in "links" (1410). He arrives at the theatre,
 at the center of a procession, a shamed figure of gender
 non-compliance: "before him Pipes / And Timbrels, on each
 side went armed guards, / Both horse and foot before him
 and behind, / Archers, and Slingers, Cataphracts and
 Spears" (1616-19). Milton has embedded this description
 with the festive and rough music aspects of the typical
 charivari. Yet, Milton has also undercut the spectacular
 nature of this image, as Samson willingly goes, refusing to
 be tied up to a cart, the more typical position of the
 scold, as the Officer threatens (1396-98).

Ultimately, Milton's engagement with the crime of
 scolding is loose, manipulable, raising more questions than
 it answers. Allusion to the crime allows, in a kind of
 shorthand manner, for the inscription into the text of
 readily understood gender norms, including a careful
 recital of permissible verbal conduct. Yet, both men and
 women fall initially into the purview of the crime only to
 evade wholesale punishment, problematizing Milton's stance
 towards the crime and the behavior it criminalized. As the
 boundaries of the crime do not hold, Milton's poem
 obliquely acknowledges the inevitability of female speech
 and the artificiality and relativism of a gendered crime.

B.

"sorceries" and "enchant[ments]"

... Some call me witch;
 And being ignorant of myself, they go
 About to teach me how to be one: urging
 That my bad tongue (by their bad usage made so)
 Forespeaks their cattle, doth bewitch their corn,
 Themselves, their servants and their babes at
 nurse (Dekker II.i.8-13).

The "devilish tongue" of the scold had a close association with another "bad tongue" of the period, that of the witch. So close was this connection, in fact, that one sixteenth-century handbook on witchcraft asserted that the "chief fault" of witches "is that they are scolds" (Scot 34). The two crimes shared the essential characteristic of representing a distinctly female form of rebellion against gender hierarchy through verbal means.⁹⁷ The witch was also another topos of the *mundus inversus*,

⁹⁷ See Dolan 200 and Underdown, Revel, Riot and Rebellion 40.

nicely illustrated in the comedy, The Late Lancashire Witches. Familial disorder, in the guise of wives dominating their husbands, children their parents and servants their masters, befalls the town, causing one character to observe that all has been "turn'd topsie turvy" (Heywood and Brome 271). Not all perceptions of witchcraft were as light-hearted as that of the play, however. William Perkins, demonstrating how seriously society viewed the witch's transgression, described her as "the most notorious traitor and rebel that can be" (3: 651).⁹⁸ Witchcraft was a felonious offence, like treason, in the early modern period, punishable by hanging until 1736. Trials for the offence in England were most numerous during the seventeenth century, reaching one peak during the Civil War years.⁹⁹

Dalila's entrance in the poem, "sailing / Like a stately Ship" (713-14), "floating this way" (1072), references subtly the crime of witchcraft, not just in its

⁹⁸ Quoted also in Stuart Clark 119.

⁹⁹ For background on the crime of witchcraft, see Ewen; Wallace Notestein; Geis and Bunn; Thomas chs. 14-18; Macfarlane, Witchcraft in Tudor and Stuart England; and Barry. For a particularly useful discussion of the gendered nature of the crime and its relationship to Protestant ideology, see Karlson.

oft-noted allusion to Cleopatra (who too is likened repeatedly to a witch and serpent, one might recall).¹⁰⁰ To float above water had horrifying associations with the judicial ordeal of "swimming," used throughout the seventeenth century to determine the guilt or innocence of an accused witch. The suspected witch was thrown into deep water. If she floated above the water, rather than sank, then she was declared guilty of witchcraft, often without any further evidence, as the water, the purifying instrument of baptism, had rejected her. In either case, of course, she would die-- either by drowning or hanging. (66-69) Dalila's ability to float, then, metaphorically convicts her of witchcraft before she has even spoken.

Samson directly builds his case against Dalila, deeming her a "sorceress" (819) whose "circling wiles" (871) and "snares" (230, 532 and 931) had magically overpowered him.¹⁰¹ He emphasizes, with pride that "thy ginns, and toys; / Thy fair enchanted cup, and warbling

¹⁰⁰ Cleopatra is accused of being "enchanting" (I. ii.125), "cunning" (I.ii.141), a "serpent" (I.v.25) and a "witch" (IV.xii.47). On the parallels between Dalila and Cleopatra, see Samuel, "Samson Agonistes as Tragedy" 256; and Milton Miller 93-108.

¹⁰¹ For previous scholarship likening Dalila to sorcery, see Brodwin.

charms / No more on me have power, their force is null'd" (933-37). Samson here uses the common rhetoric of witchcraft prosecution, alluding directly to the legal characterization of a witch's *maleficient* techniques. As the law provided, the main offence involved the use of "any witchcraft, sorcery, charm, or enchantment" to cause the death or injury of a person or the destruction of property (Blackstone IV. 61). Keith Thomas has shown that the majority of witchcraft accusations involved unexplainable injury (436).

The appropriateness of this crime, then, to Samson's predicament is manifest, as he has supernaturally lost his strength. The proximate cause of this loss, in Milton's poem, although not in the Book of Judges, is Dalila's cutting of his hair. Fascinatingly, accusations of witchcraft sometimes turned precisely on this action. One woman was indicted on charges of witchcraft for cutting off a child's hair and burning it, and so causing the child's death.¹⁰² Justices of the peace routinely searched the homes of suspected witches for locks of hair of those individuals who claimed that they had been bewitched.

¹⁰² The Wonderful Discoverie of the Witchcrafts of Margaret and Philip Flower (London, 1619). For a discussion of this case, see Dolan 183.

Experts viewed such locks of hair as valid physical evidence of witchcraft,¹⁰³ consistent with the widespread belief that "[o]ne could harm a man by manipulating his hair ... which contained his vital spirits" (Thomas 438).¹⁰⁴ The fear that a female witch could tamper with a man's vital spirits bears on one further aspect of Dalila's alleged *maleficium*, her sexual misconduct. Witches faced accusation for both seducing men (explicitly complained of by Samson) and inducing impotence (symbolically at issue, certainly, in Samson's "castration") (Institoris and Sprenger 44, 188-22, 137-40).

Samson's statement that he has "learn't / To fence my ears against thy sorceries" (937-38) identifies the main source of Dalila's crime as residing once again in her speech. Critics have explored the connection between female speech and witchcraft, tracing their linkage in a range of popular literature, including witchcraft treatises and guides, sermons and domestic plays.¹⁰⁵ For example, the infamous Malleus Maleficarum, the first printed

¹⁰³ See, for example, Swayne v. Atkinson (1658), quoted in Ewen 273 and Dolan 183, fn. 26.

¹⁰⁴ Thomas 438, also quoted in Dolan 183, fn. 26.

¹⁰⁵ See, notably, Belsey, Subject of Tragedy ch. 6 and Dolan ch. V.

encyclopedia of witchcraft, ties the issue of speech to women's susceptibility to satanic influence: "they have slippery tongues, and are unable to conceal from their fellow-women those things which by evil arts they know" (Institoris and Sprenger 44).

Yet again, Milton 'magically' undercuts Dalila's figuration as a criminal, as she defies punishment for the crime. Further, a decidedly female crime once again gets turned upon Samson himself. He is endowed with the only truly supernatural ability in the poem, the source of which still manages to preoccupy critics. The question of Samson's regeneration at the end of the poem turns finally on whether one views the source of his strength as divinely inspired. To read Samson as reprobate is to liken him to a witch, that is, to side him with the devil's party, whether he knew it or not. To interrogate Samson's magical ability, its source and cause, then, is to dispel the witch's unique association with female forms of rebellion and power. The "slipper[iness]" of Milton's engagement with witchcraft, applied to both men and women, explodes the categorization of witchcraft and the clean gender boundaries encapsulated by it. The poem signals finally to the inappropriateness of gendered crimes, constructed on stereotypes that do not hold.

C.

"Matrimonial treason" and "wedlock-treachery"

Good wives and bad, example take,
 at this my cursed fall,
 And maidens that shall husbands have
 I warning am to all:
 Your husbands are your Lords & heads
 you ought them to obey,
 Grant love betwixt each man and wife
 unto the Lord I pray (A Warning for All
 Desperate Women 105-12).

This ballad, ostensibly sung by the notorious criminal Alice Davis, tells the story of her conviction for husband-murder, the gravest crime of which Samson accuses Dalila. Considered a "breach both of natural and civil relations" (Blackstone IV: 203) and the most serious threat to the social and political order of society, Davis's alleged crime struck at patriarchy itself. Husband-killing did not simply constitute murder in this period, but rather the more aggravated felony of treason, equating, then, the killing of a husband with the killing of a king. Should a

husband kill his wife, he was convicted of murder, but, "if a servant slayeth his master, or a wife her husband, or when a man, secular or religious, slayeth his prelate to whom he oweth faith and obedience," this too was deemed treason. (Stephen III: 34-5). Sir Edward Hyde justified the gender disparity by emphasizing "the obedience which in relation of law is due from the wife to the husband" (I: 336). The law of petit treason, then, served "both [as] a logical extension and a consistent expression of the general position of married women at law" (Gavigan 341).¹⁰⁶ In its conflation of the public and private, the domestic and political, it also exemplified how the analogy of home and state insidiously found its way into legal constructions.¹⁰⁷

While both murder and treason amounted to capital offences in the period, punishable by death, the importance of the distinction between the two crimes was not simply

¹⁰⁶ For other legal discussions of petty treason, see Campbell; and Sharpe, "Domestic Homicide in Early Modern England."

¹⁰⁷ My discussion of petty treason is indebted to Dolan's extended discussion of spousal murder in Dangerous Familiars. For other helpful literary discussions of petty treason in the early modern period, see Belsey, The Subject of Tragedy; Dolan, "Gender, Moral Agency, and Dramatic Form"; Doody; Travitsky, "Husband-Murder and Petty Treason"; Zomchick; and Orlin ch. 2.

conceptual. Radically different methods of capital punishment attached to each crime, dependent too on the gender of the felon. Both men and women convicted of murder were drawn to the scaffold on a hurdle and then hanged, the most privileged form of punishment, as least tortuous. Men convicted of petty treason were also hanged. Only in convictions of high treason did men face the harsher punishment of drawing, hanging, decapitation and quartering. Women convicted of both petty and high treason, however, faced the aggravated punishment of being burned at the stake.

Samson explicitly constructs Dalila as a petty traitor.¹⁰⁸ Laura Lunger Knoppers has remarked that "Samson draws strikingly on the discourse of treason" in his depiction of Dalila ("'This So Horrid Spectacle'" 498-99); however, Knoppers only notes the political definition of high treason against the state (or king), ignoring the more specific crime of petty treason to which Samson alludes. Certainly, as Knoppers has documented, the political

¹⁰⁸ The epithets of "serpent" and "sorceress" also figure in the representation of other petty and political traitors of the period in such domestic tragedies as John Webster's The White Devil, Elizabeth Cary's The Tragedy of Mariam, William Shakespeare's The Tragedy of King Lear and Antony and Cleopatra and the account of Alice Arden's murder in The Arden of Faversham.

rhetoric of treason imbues the text. Dalila is by turns "[f]alse" (749), "deceitful" (202), "treacherous" (1023), Samson's "faithless enemy" (380) and "foe" (561), all words which directly resonated in the definition of political treason. Dalila's actions rise to the level of high treason in two distinct ways: she has disclosed a state secret to the enemy about a national defense weapon, and has "killed" the leader of the Hebrews. The context of treason also underlies Samson's characterization of the altogether silenced Woman of Timna. Samson explicitly accuses his "false" (227) first wife of treason on precisely the same grounds as he did Dalila:

... did not she
Of *Timna* first betray me, and reveal
The secret wrested from me in her heighth
Of Nuptial Love profest, carrying it strait
To them who had corrupted her, my Spies,
And Rivals?" (382-87).

Eerily, the Woman of Timna, unlike Dalila, actually faces the statutorily-prescribed punishment for treason— she is burned alive.

Yet, it is in the context, in Dalila's words, "[o]f

falshood most unconjugal" (979) that I would urge a reading of Dalila's actions. Twice Samson refers specifically to Dalila's crime as "Matrimonial treason" (958) and "wedlock-treachery" (1009), underscoring the domestic nature of her treason. He also insists on its personal direction. Her "Treason [was] against me" (391) (not just the state); she was "my faithless enemy" (380), "My Wife, My Traytress" (725; emphasis added).

Her actions, of course, do not constitute actual, but only symbolic murder. Nevertheless, these actions do have a kind of parity with the actions of actual husband killers in the period. Frances Dolan, in her notable study of the representation of petty treason, has made one observation particularly apt to the representation of Dalila's treason. Dolan describes the concept of a divorce *a mensa et thoro* (from table and bed) as "reinforc[ing] the significance of these furnishings as sites of intimacy and estrangement" (Dangerous Familiars 29). Their violation, as husband murder often took place in these locations, exemplified the treacherous nature of the murderesses who, Dolan adds, often employed "covert" methods, such as poison, or took advantage of their husbands' sleep, to accomplish their crimes (Dangerous Familiars 30). Dalila's symbolic murder of Samson, taking place in his bed while he

sleeps, fits the actions of the popularized villainess perfectly.

Samson threatens to punish Dalila for her alleged treason, "to tear [her] joint by joint" (953), alluding uncannily to the punishment men, not women, faced for treason (appropriate, perhaps, considering Dalila's perceived gender inversion). Using strikingly similar language to that of Samson, Sir Edward Coke describes this punishment: "his body ... shall be torn, pulled assunder, and destroyed, that intended to tear, and destroy the majesty of government" (210). Arguably, Dalila does succumb to capital punishment in the theater, as in it gathered the "Lords, Ladies, Captains, Counsellors, or Priests, / Their choice nobility and flower, not only / Of this but each *Philistian* City round" (1653-55). Dalila, as an honored member of Philistine society, would presumably have gathered there with the Philistine elite and so faced her death. According to this conclusion, then, Samson, like Dalila, is guilty of petty treason, the poem once again insisting on the parity of Samson's and Dalila's criminal misconduct. So, too, Samson's death parallels that of Dalila, bearing more resemblance to the dismemberment of traitors than the hanging of murderers. Yet, the most devastating punishment visited upon the traitor obliquely

occurs only to Samson. Known as "corruption of blood," Sir Edward Coke described that the traitor "shall lose his children (for they become base and ignoble)" and he shall also "lose his posterity, for his blood is stained and corrupted and they cannot inherit"(210, fn. 14). The offspring and posterity of the traitor were, thus, required to expiate the crime long after the traitor's death, and the disinheriting of future generations was to extend forever. The omission of the name of Dan from the list of the twelve tribes in the Book of Revelation, a subject of debate as to its significance in interpreting Milton's poem, here becomes associated with the terrible punishment of corruption of blood.

Yet, Manoa insists that "Samson hath quit [or acquit] himself / Like Samson" (1709-10), implying that he is neither convicted of nor punished ultimately for a crime. Likewise, consistent with its treatment of Dalila's other alleged crimes, Samson Agonistes elides the closure that punishment of Dalila would accomplish. The poem consciously leaves ambiguous the question of what becomes of Dalila upon her exit. By leaving open the possibility that Dalila escaped the punishment of death, the poem has arguably rendered her guilt suspect.

Milton's poem in this respect diverges sharply from

contemporaneous popular literature accounts of husband murder, all of which, whether literary, journalistic or a hybrid, represent the accused as definitively guilty and end in her death at the stake. These endings, as scholars have demonstrated, served morally "didactic and normative" purposes, intending to inculcate and reaffirm a certain set of values and behavior important to the hegemony (Sharpe, "Last Dying Speeches" 148).¹⁰⁹ J.A. Sharpe has described such "gallows" literature as accompanied by dying declarations of the convicted felons "usually marked by an acceptance of the justice and deservedness of the sentence which was about to be carried out, a warning to those present to avoid a similar fate, and a confession not only of the crime which had brought retribution, but also of a career of past sinfulness" (Crime in Early Modern England 162). So, too, Samson strenuously urges Dalila to "Confess" (829). Yet, her speeches do not fit within the model of gallows literature, and her voice of defiance is a radical re-working of the familiar genre. She does not acknowledge her guilt at the end of their exchange but instead, reminds Samson that criminal categories are

¹⁰⁹ For other discussions of such gallows literature and last dying speeches, see Faller and Dolan, "'Gentlemen, I have one more thing to say.'"

relative, "double-mouth'd" (971). Here, she eschews a reassertion of order by refusing to confess and face punishment. Subversion and gender rebellion do not get contained, but instead are permitted to survive unchecked.¹¹⁰

This conclusion accords with Frances Dolan's view of the narratives of husband murderers. Permitting these women to explain their motives leads, in her analysis, to the moral of the stories going "awry." "To imagine, let alone sympathize or identify with, the frustrations of a wife is to question the legal and moral assumption that in the household there is only one citizen, one legal agent, one decision maker: the husband" (Dolan, Dangerous Familiars 32). So, too, in Milton's poem, Dalila uses her voice as an opportunity to justify her actions and explain her motives. One such motive directly parallels that used by actual husband killers in the period. Dalila explains that she "knew that liberty / Would draw thee forth to perilous

¹¹⁰ The "subversion/containment model" has been debated by critics in the context of inversion rituals. Some view such rituals as "safety valves," ultimately reinforcing the status quo by licensing temporary misrule and then reinstating order. See, for example, Donaldson, The World Turned Upside Down, and Underdown, Revel, Riot and Rebellion. Other critics have argued that such inversions interrogate fixed constructs, sanctioning riot and celebrating destruction to the point of subversion. See Natalie Davis and Dollimore 25-30.

enterprises / While I at home sate full of cares and fears
 / Wailing thy absence in my widow'd bed" (803-07). In one
 criminal broadside, a convicted petty traitor likewise
 complains that her husband's frequent absences and neglect
 had led her to seek his murder. This critique, shared by
 Dalila and a seventeenth-century convicted felon,
 challenges the Protestant re-conception of marriage and its
 division of public and private spheres.¹¹¹ Dalila equates
 the absence occasioned by this separation of spheres not
 with marriage, but its exact opposite, that of widowhood.
 Her attempt to take "public" action (867), then,
 constitutes an effort to re-conceptualize marriage and
 women's prescribed roles within it.

Scholars have documented a profusion of
 representations of husband murder in a wide range of
 genres, including domestic tragedy, ballads and gallows
 literature, in the years preceding the Civil War (precisely
 the period in which scolding and witchcraft accusations
 reached peaks and, thus, seeming to participate in the same
 "crisis" in gender relations). The Restoration period, in
 contrast, witnessed a dwindling of such accounts and a

¹¹¹ See also Guillory, "Dalila's House: Samson Agonistes and
 the Sexual Division of Labor."

concurrent rise in contrasting accounts of wife murder and tyrannical husbands. Samson, interestingly, exemplifies many of the attributes of such wife killers. Most notably, his fury ("anger, unappeasable, still rages / Eternal tempest never to be calm'd" [963-4]); and his threats of physical abuse ("to tear thee joint by joint" [953]) correspond to the brutality and violence of these men. These accounts depict in horrifying detail the vulnerability of wives in a system where wife beating, except in extreme cases, escaped punishment.¹¹² The rise in such representations has been attributed to the larger political controversies of the period over sovereignty and its limits. As patriarchal conceptions of hierarchy gave way to a contractarian vision of the state and marriage, the focus shifted in discourse from the risks of inferiors' insubordination to the risks of superiors' tyranny. Dolan and Staves argue that spousal murder accounts reflect these larger political debates—so, it would seem, does Samson Agonistes, as Dalila's rebellion can serve to mirror broader issues of political rebellion. Milton's poem, in permitting Dalila's insubordination to go unpunished and in critiquing Samson, her "natural" authority figure, can be

¹¹² For historical background on wife-beating, see Margaret Hunt; Foyster; and Anna Clark.

read as subtle advocacy of rebellion by political inferiors against their "natural" superiors.

The pamphlets of tyrannous husbands also permit, as in those ostensibly written by female petty traitors, an opportunity to provide motives. Often the pamphlets record a gradual fall into sin, as lesser crimes lead to greater and more heinous ones. One pamphlet, describing such a fall, explicitly underscores the importance of the narrative of Samson and Delilah to seventeenth-century perceptions of domestic murder. In a broadsheet circulated on the day of his execution, a wife murderer wrote:

time was when I had as great a delight in vanity, as the most debauched among you. The day was lost, in my apprehension, in which I met no jovial companion to drink or carouse away my hours; the night misspent, that was not improved in the embraces and dalliances of some Dalilah ... and I looked on myself with shame when I let slip an injury without a revenge (The Sufferer's Legacy).

Here, the Samson figure is portrayed as a murderer and particularly depraved in his vengeful uses of violence, a

figuration which arguably resonates in Milton's construction of Samson. Milton's Dalila, on the other hand, in her elevation to the status of wife (and thus, the victim of the murder) manages to avoid her typical figuring as a whore.

The narration of motives in the context of wife murder also proves interesting from another perspective. One murderer "hope[d] that all by his example would learn to stifle the first motions of wickedness and sin, since such was the depravity of human nature that no man knew how soon he might fall."¹¹³ While one John Gower, executed for murdering his wife, declared that "since he received the sacrament he found his heart much softened, and that he had felt the motions of God's holy spirit striving with him."¹¹⁴ The use of the term "motions", then, to describe internal perturbations in the context of crime was common and could refer both to retribution and regeneration. Two conflicting motions, then--one moving towards Satan and the other towards God--complicate any interpretation of Samson's own statement: "I begin to feel / Some rouzing motions in me which dispose / To something extraordinary my

¹¹³ Quoted in Faller 66.

¹¹⁴ Quoted in Sharpe, "Last Dying Speeches" 153.

thoughts." (1381-83).

These motions also emblemize the conflicting motions at work in Milton's drama in his representation of spousal murder. Samson Agonistes, in its recording of the stories both of female mutiny and of masculine tyranny, functions, in Dolan's words in a related context, as a "palimpsest" (Dangerous Familiars 107) The work is implicitly informed by issues both of hierarchical order and the need for its levelling. As the two stories vie with each other, competing narratives of gender rebellion get articulated, altogether destabilizing any one motion, or perspective, which unambiguously condemns Dalila and celebrates Samson.

* * * * *

Milton endowed Dalila with traits that resonated with a broader significance as the world turned upside-down during the Civil War, and then upside-down again at the Restoration. Whether an inferior could rebel against an absolute authority deemed naturally and legally a superior constituted the central domestic-and political question-of the seventeenth century. Because insurrection is figured in Samson Agonistes as a dominating, insubordinate woman and an at times impotent, at other times tyrannical man, to

turn the world right side up again would necessarily have required a reversion back to traditional gender hierarchies. Because this return does not occur, and because gender categories continually implode, the didactic moral of the drama remains elusive.

Dalila, like other "women-on-top" of the period, voices a counter-discourse, iconoclastic in its levelling of gender hierarchies. Samson Agonistes, although criminalizing, even demonizing Dalila, gives her a role, one that permits gender insurrection to invade the text. Milton was uncannily prescient in mapping out the contours of a debate about patriarchal hierarchy and its limits that would persist into the eighteenth century, as Dalila continued to figure prominently in literary discourse on gender relations, and such discourse necessarily turned on women's criminality. In Amelia, Henry Fielding, for example, would link the speech of a "lady" with Dalila and other literary and actual female murderesses, cautioning the reader not to be surprised

that a lady, in whom we had remarked a most extraordinary power of displaying softness, should, the very next moment after the words were out of our mouth, express Sentiments becoming the

Lips of a Dalila, Jezebel, Medea, Semiramis,
 Parysalis, Tanaquil, Livilla, Messalina,
 Agrippina, Brunichilde, Elfrida, Lady Macbeth,
 Joan of Naples, Christina of Sweden, Katherine
 Hays, Sarah Malcolm, Con. Philips, or any other
 heroine of the tender sex, which History, sacred
 or profane, ancient or modern, false or true,
 hath recorded (I: 30).

Not confined to literary depictions, the typed criminalized woman, as constructed in Samson Agonistes, would reappear in real contexts, continuing to represent a threat to the social structure for the same reason emphasized in Samson Agonistes--her public speech. Thus, Horace Walpole would refer to Mary Wollstonecraft as a "hyena in petticoats" (15: 337) and Hannah More would be accused of treason and murder during the notorious Blagdon Controversy.¹¹⁵

Milton's poem has invited its readers to act as Samson and sit in judgment on scenes of criminal justice--to examine, interrogate and arbitrate rebelliously. By foregrounding issues in great conflict, even crisis, during this period and refusing to resolve them into neat

¹¹⁵ For background on this controversy, see Jones, Hannah More and Ikegami 235.

exemplums of the reigning hegemony, Milton's vision, in the final analysis, defies closure. Gender order is not reinscribed in Samson Agonistes, nor is the world turned right side up.

VI.

"a peal of words": Criminal Speech in Samson Agonistes

I shall now make bold to present this honorable
 Committee with the salvage and barbarous
 inhumanity exercised upon my Wife ... [The Lords']
 order, that she shall be cast into the most
 Infamous Goale of *Bride-well*, the common Centre
 and receptacle of bauds, whores, and strumpets ...
 she told the Marshall that she would not obey
 [the order] ... Whereupon [they] dragged and
 carried her on two Cudgels [to *Bride-well*],
 calling her *Strumpet* and wild *Whore*, thereby to
 possess the people, that she was no woman of
 honest & godly Conversation ([Richard Overton]
 16-19).

Mary Overton, wife of Leveller leader Richard Overton,
 agitated for law reform during the Civil War. She signed
 and distributed petitions to the Parliament, supported her
 husband in printing illegal pamphlets, found herself tried
 and imprisoned for her actions and dared to speak out
 against the legality of her arrest. She is physically

punished for her crime—a crime that intimately concerns her public speech, or in her husband's words, her "Conversation."

Milton's Samson Agonistes continues Mary Overton's conversation, recording Dalila's public speech and the hostile reactions to her speech in the drama's central meditations on the propriety and consequences of women's speaking. The poem is heavily laden with the values, stereotypes and ideals specific to seventeenth-century discourse on women's public voice ubiquitously pronounced in conduct literature. Milton's Dalila shares many of the attributes of the conduct literature's Delilah. Yet, Milton, by having given Dalila such an extended voice in the poem, also frees her from the strictures of conduct literature, as she voices a defense that does not simply reinforce didactic prescriptions but manipulates and even transgresses the dominant paradigm.

The Civil War period provoked an unprecedented number of transgressive conversations, as male and female agitators petitioned Parliament, Ranters ranted, Quakers accused, Fifth Monarchists prophesied, Puritans preached and printers published tens of thousandths of political pamphlets. In the wake of this clamor, Parliament increasingly sought to curb, restrain or somehow modulate

the flow of this "peal of words" (Samson Agonistes, 235), passing several ordinances and statutes to regulate both verbal and written speech, including The Printing Act of 1649 and The Blasphemy Act of 1650.¹¹⁶ So, too, the ecclesiastical, manorial and common law courts waged war on speech in the years leading up to the Civil War, prosecuting as unlawful a wide range of verbal conduct. While relatively few women faced prosecution under the Printing or Blasphemy Acts, thousands of women found themselves in court defending their reputations against criminal charges and, importantly, proactively initiating legal suits involving speech crimes. Defamation suits, in particular, provided one of the few officially sanctioned means for women to vocalize critique.

The previous chapter concentrated nearly exclusively on Samson's voice and his charges against Dalila. This chapter will be devoted to Dalila's voice to counter-balance scholars' relative failure to acknowledge her motives. One can understand Dalila's extended dialogues in the poem as a legalistic defense of her actions and an

¹¹⁶ Firth and Rait 2: 245-54 (The Printing Act of 1649) and 2: 409-12 (The Blasphemy Act of 1650). For important discussions of the intersection of these statutes with Milton's work, see Dobranski; and Loewenstein, "Treason Against God and State."

assertion of her own set of criminal grievances against Samson. Like actual women who litigated in the period, Dalila inserted herself into a discourse that provided her with "a rare, official, institutional weapon" to combat conflict (Gowing 42). Her speeches take on significance as claims of verbal and legal authority and agency in a society that severely restricted women's public voice and participation in the law.

Court records of the early modern period reveal the extent to which women's pleadings differed from those of men. The pleadings afforded women an opportunity to retell the disputed events in their own words, in the context of their own particular and unique involvement; and their accounts, accordingly, differed substantially from those of men. Legal historians have characterized these narratives as consciously constructed, even fictionalized, interestingly, taking advantage of the ideals of conduct literature to weave stories and fashion their cases in a manner more acceptable to the courts (Stretton 179).

Many of the narrative strategies of Dalila's defense correspond to those of female litigants found in the courts' pleading records, including her style of self-presentation and manipulation of gender stereotypes. Her initial demeanor is contrite, tearful, and she begins her

defense by emphasizing her "wavering resolution" (732), "fear, and timorous doubt" (740) and desire to seek "amends" (745). Female litigants likewise emphasized their vulnerability and initial hesitation to sue, anxious to portray themselves as humble and conciliatory. This deferent style could forestall any negative impression provoked by a female's appearance in court. Dalila also grapples directly with the gender constructs of conduct literature, blaming her "womans frailty" (783) and "weakness" (785) for her actions. Her attempt to portray her character as blameworthy save for those "common female faults" (777) of curiosity and talkativeness, "incident to all our sex" (774), serves the purpose, then, of encouraging a sympathetic reception. Also in common with this strategy, Dalila lays stress on the moral worth of her behavior, motivated by love of her husband, her country and religion. As Tim Stretton has argued, litigants knew the ideals and values of their society as dictated by conduct literature and attempted to fit themselves into this model, "put[ting] on moral airs, much as they might put on their Sunday best" (211).

Dalila, in her response to Samson's accusations, puts on such moral airs, yet, in so doing, also interrogates the wider discourse on women's speaking in the period. "No

venomous snake stings like a woman's tongue,"¹¹⁷ declared a typical ballad of the 1640's, voicing the predominant opinion that women's speech was innately incendiary and therefore required bridling. Thus, one of the persistent themes of conduct literature is its harping on the need for women to curb, circumscribe and even to silence their tongues. The breaching of the injunction of silence was thought so pernicious that one man even used it to justify his wife's murder, arguing in a declaration at his execution that he had "done God and the world good service, as sending so unquiet a creature out of it" (Sharpe, "Last Dying Speeches" 43).

In this context, conduct literature emphasized that one of a wife's primary duties was to keep her husband's secrets intact, an obligation reinforced by the law's prohibition upon wives testifying or serving as witnesses against their husbands in the common law courts. Indeed, one marriage manual unabashedly advised that it would be far better for a woman to bite off her own tongue than for her to betray her husband's confidence (Tilney 688-95), endorsing the solution to the problem of female speech achieved in the myth of Philomela, a story that not

¹¹⁷ Quoted in St. George 293.

surprisingly inspired several re-tellings in the period.

The duty of wifely silence was underscored by writers by referring specifically to Delilah, highlighting the centrality of this biblical story to the period's discourse on the regulation of women's speech. One sermon described Delilah as "treacherous" (The Incomparable Jewell 20); while a contemporaneous marriage handbook argued that Delilah's failure to protect her husband's secret had severe political ramifications, as it was only after Delilah's blabbing that the Philistines and Nazarites became enemies: "*Samsons Wife would no nay, but she must know her Husbands hart, (touching his riddle) and tell tales to her nation, whereupon began the occasion of his hate of them, & their enmity against him*" (Wing 93). According to this reading, then, a wife's volubility could lead to a national crisis, illustrating beautifully the extent to which society viewed women's private misconduct as capable of precipitating public disorder in the period.

The didactic literature did admit, however, that "for all these [biblical] warnings we have some women that can chafe and scold with their husbands" (39), uneasily recognizing that the reality of women's speech did not always conform to the ideal of women's silence. Even the "Homily of the State of Matrimony" acknowledged how "few

matrimonies there be without chidings, brawlings, tauntings, repentings, bitter cursings, and fighting."¹¹⁸

Yet, conduct literature emphasized that verbal misconduct could only be perpetrated by a woman whose character was somehow suspect. William Whately, for example, opined in A Bride-bush: "you yoke-fellowes must for each others (both credit and) comfort sake, keep the secrets each of other faithfully ... What a passion did *Sampson* fall into, when he found that his wife had reuealed his riddle? ... It did well enough become *Daliah*, to play such a treacherous pranke, neither could a man well expect better from an harlot: but for a wife to carry her selfe so like a strumpet, who would have looked for it? Who could brooke it?" (Whately 80-81). As in the case of Mary Overton, a woman whose speech was promiscuous must necessarily be sexually promiscuous as well.¹¹⁹ This conflation of verbal and sexual chastity constitutes one of the residing gender constructs of the period, as garrulous females repeatedly found themselves likened to "[s]taines of woman-kinde, blemishes of their sexe, monsters in

¹¹⁸ Quoted in Certain Sermons or Homilies 535.

¹¹⁹ For further discussion of this conflation, see Stallybrass, "Patriarchal Territories: The Body Enclosed."

natures ... next to harlots, if not the same with them"
(Whately 39).

Delilah did not face blame alone for marital discord, as Samson, and by extension, all husbands, were also implicated. Some marriage manuals even placed primary responsibility on Samson. As William Gouge admonished: "those who upon their wives importunity are moved (as *Sampson* was) to reveal such secrets as are not meant to be known, Husbands may hearken to their wives moving good things, but they may not obey them in evil things; if they doe, their fault is double; 1. In doing evil; 2. in losing their authority" (Gouge 4: 5) Milton's Dalila takes advantage of the dominant ideology's prejudice against husbands, as depicted in the conduct literature's condemnation of Samson. She, too, stresses that Samson was primarily to blame, and that she only acted consistently with his example ("To what I did thou shewdst me first the way" [781]). Most powerfully, she first offers a substantive defense of her actions and then further manipulates the prejudice against husbands to offer a substantive critique of Samson's actions. She proclaims that he, rather than she, has done evil and should, accordingly, be punished for his unlawful speech. A poem that at first seemed to offer a critique of female

garrulousness, upon closer review, reveals itself to be about the illegalities of male speech.

A.

The "pardon[ning]" of Dalila

You do remember that before this time you have been severally indicted for several felonies ... and for your trials have severally put yourself upon God and the country, which country hath found you guilty. Now, what can you say for yourselves why according to law you should not have judgment to suffer death? What sayest thou?

Upon conviction, but before the sentencing, the prisoner in a felony or treason trial was brought to the judge and asked the former question. Known as the *allocutus*, this moment marked the convicted prisoner's last opportunity to plead mitigating facts that justified a lighter sentence or to pray for pardon. While Dalila denies seeking "[t]o lessen or extenuate [her] offence" (767), she specifically asks for Samson's "pardon" three times (738, 771 and 814) during their encounter. To "pardon" had a technical meaning of legal significance in the period,

referring to the widespread state practice of commuting the death sentences of convicted felons on a discretionary basis. The state utilized pardons to mitigate the harshness of a system that relied on capital punishment as one of the few methods of available discipline and in which, as Cynthia Herrup has emphasized, "[e]xtenuating circumstances were not generally accepted as a defense against either a conviction or a condemnation" ("Law and Morality" 105). Nevertheless, such considerations as the circumstances of the crime and the motives of the accused would be considered in determining the leniency of the sentence and whether to grant a pardon. Dalila specifically alludes to such extenuating circumstances at the beginning of her plea:

if [my offence] be weigh'd
 By it self, with aggravations not surcharg'd
 Or else with just allowance counterpois'd,
 I may, if possible, thy pardon find
 The easier towards me, or thy hatred less" (768-72).

A conviction for petty treason required a showing that the crime had been committed with the *mens rea* (state of

mind) of malice aforethought. During the early modern period, the courts defined malice aforethought as having the "intention to cause the death of, or grievous bodily harm to any person" or "knowledge that the act which causes death will probably cause the death of, or grievous bodily harm, to some person" (Stephen, History II: 119). Dalila pleads that she had neither the intention to cause him harm nor the knowledge that her action would cause him harm. As she explains: "I was assur'd by those / Who tempted me, that nothing was design'd / Against thee but safe custody, and hold" (800-02). Under this argument, while Dalila may have told Samson's secret, she had no knowledge that her disclosure would lead to his 'death.' She had been mistaken as to the harmful consequences of her actions, ones inspired primarily by a desire to keep him near. Having been duped by the magistrates, Dalila could not have acted with malice aforethought.

When this defense fails, Dalila turns to a second argument that also concerns her *mens rea*. She asks Samson to consider "what assaults I had, what snares besides, / What sieges girt me round, e're I consented; / Which might have aw'd the best resolv'd of men, / the constantest to' have yielded without blame" (845-48). In order to rise to the level of malice aforethought, "[t]he act must be

voluntary, and the person who does it must also be free from certain forms of compulsion" (Stephen II: 97). In defining compulsion, J.F. Stephen writes:

A man is under compulsion when he is reduced to a choice of evils, when he is so situated that in order to escape what he dislikes most he must do something which he dislikes least ... A man is compelled, when he is under the influence of some motive, at once powerful and terrible (II: 102-03).

Samson concurs in the requirement of voluntariness, stating that "[w]here outward force constrains" (1369), misconduct has not occurred.

Unlike Samson's murders, which he adamantly asserted were undertaken of his "own accord" (1643), Dalila pleads "powerful and terrible" compulsion for her actions. She insists that she acted not simply because the state encouraged her to rebel against her husband. She also denies having been bribed: "It was not gold, as to my charge thou lay'st" (849)—a re-working by Milton of the Biblical account offered here, arguably, to serve the purpose of complicating Dalila's motives. Rather, she

insists that the magistrates and officials, ones, in other words, with the power to compel, "commanded, threat'n'd, urg'd, / Adjur'd...press'd" her (852-54). These words are a devastating statement of coercion, of having had, in effect, no independent agency or freedom to choose. Critics have altogether ignored the truly capricious and vulnerable position in which Dalila found herself, required to act against her own interests for the sake of her survival.¹²⁰ One must take seriously the threat that Samson represented to the Philistines and their dire need to bring about his downfall. For a Philistine woman to be married to their greatest enemy and to refuse to aid in his demise would have constituted a serious breach of national security. The Philistine authority would surely have used all means in their power to compel Dalila to assist them. Should Dalila have chosen not to comply, she risked prosecution for treason, for a willful adherence to the enemy, punishable by her death. When Dalila cautions that

¹²⁰ Susanne Woods does mention in passing that Dalila found herself "[t]rapped by patriarchy," but this statement, in my opinion, does not go far enough to account for Dalila's lack of agency. Woods 28. I would also note that Dalila's allegation that the magistrates had "press'd" (854) her could allude to the punishment of pressing or the "*peine forte et dure*," inflicted on felons who stood mute at trial. Thus, Dalila, refusing to disclose Samson's secret, could have suffered physical as well as mental coercion. I am grateful to John Leonard for this observation.

she "feard lest one day thou wouldst leave me / As her at *Timna*" (794-95), she does not simply allude to a fear of being left alone. Here Dalila records her awareness that she could very well have suffered the same fate as the Woman of Timna, burned to death in punishment for treason, and that she had sought "by all means therefore" (795) how to avoid this chilling end. Given Milton's own valuation of the freedom to choose, this kind of coercion, of real duress and compulsion, seems unsupportable.

Sir Edward Coke explicates that the defense of compulsion applied in cases of high treason only during times of war when "the compulsion is applied by a body of rebels or rioters, and in which the offender takes a subordinate part in the offence" (106).¹²¹ Even under this limited defense, Dalila's actions would seem to be insulated from criminal liability (or at least merit pardon). This analysis depends for coherence, however, on Dalila's loyalty not to her own people but to her husband as a matter of law. Under coverture, Dalila's identity had been subsumed within that of Samson: they were legally "one flesh." Yet, coverture did not protect a wife from criminal accountability in cases of treason, as she could

¹²¹ For further discussion of the defense of duress in the context of contemporary law, see Fletcher 207.

not claim the defense of a husband's compulsion. She instead faced trial as a single woman. To cleave, then, to her husband, as Samson insists was her obligation ("Being once a wife, for me thou wast to leave / Parents and countrey...Thou mine, not theirs" [885-86, 888]), incorrectly states the law, as she would have been guilty of treason for so cleaving. Here lurks a "covert" critique of the precarious status of the married woman, simultaneously expected, by the civil laws of marriage, to be faithful to her husband as she had no legally separate identity, and by criminal law, to be faithful to her own country as she was deemed an independently accountable subject. Dalila's plea for pardon voices the impossible position of the feme covert, subject to indictment under conflicting yet equally operative systems of law, a figure finally of the law's duality and the artificiality of its constructions, reflective not of absolute truths but only of relative ones.

B.

Conduct literature cautioned that in the wake of untruthful criticism, individuals should practice forbearance: "a special remedy against malicious tongues is

to arm our selves with patience, meekness' and silence, least with multiplying words with the enemy we bee made as evil as he."¹²² Here, the "double bind" of women's position in the law is foregrounded. Publicizing complaints by taking them to court or vocally defending them did not conform to the ideal of woman's silence. Perfectly honorable women should not, technically, have complained of ill treatment or discussed their reputations abroad at all. Yet, the choice--remain silent and face conviction, or fight back and face accusations of unwomanly conduct--proves untenable to Dalila: "Bid go with evil omen and the brand / Of infamy upon my name denounc't?" (967-68). She ultimately determines, as did so many other women in the period, that she would wage law against her adversary rather than remain silent.

Dalila's substantive defense to her actions, thus, takes on a more aggressively litigious posture, as she "cross-claims" that not she, but rather Samson has been guilty of unlawful speech and formally accuses him of the crime of defamation: "My name perhaps among the Circumcis'd / ... To all posterity may stand defam'd" (975, 977).

¹²² "An Homelie against Contencion and Braulynge," quoted in Certain Sermons or Homilies 199.

Punishable in both the ecclesiastical and common law courts, the law defined defamation as "maliciously and falsely [to] utter any slander or false tale" which damaged a person's "*reputation* or good name" (Blackstone III: 123). In determining whether the words could damage the person's reputation, courts required proof that the words had been "published abroad" (Baker, An Introduction 504-05) and had caused public "infamy, discredit or disgrace."¹²³ Dalila, in accord with the legal requirements for proving defamation, emphasizes the malicious and false nature of Samson's slander: "With malediction mention'd, and the blot / Of falsehood most unconjugal traduc't" (978-79). She also alleges that Samson had published these slurs "[i]n Dan, in Judah, and the bordering Tribes" (976), causing perpetual "infamy" (968) to her name.

The poem dramatically enacts the precise nature of Samson's defamatory speech, as Samson hurls several epithets at Dalila during the course of their interchange. Many of these epithets constituted legally cognizable defamatory statements in the period and bear directly on the societal ideals of womanhood articulated in conduct

¹²³ Smale v. Hammon (1610), quoted in Baker, An Introduction 504.

literature. For example, Samson calls Dalila a "lascivious" (536), "deceitful Concubine" (537), reinforcing the Chorus's characterization of her as "[u]nclean, unchaste" (321).¹²⁴ These slurs resonate with particular force in the law of spiritual defamation prosecuted in the ecclesiastical courts. They do not simply allude to her biblical status as unmarried, nor reinscribe the dominant archetype of the verbally, and therefore sexually unchaste woman. Rather, Samson's charges accuse Dalila of committing the crimes of fornication and/or prostitution. Studies of the ecclesiastical court records indicate that by far the largest class of defamatory statements brought in the early seventeenth century involved such allegations of sexual misconduct on the part of female plaintiffs. In the consistory court in London, for example, sexual slander cases brought by women amounted to as many as 70% of the court's lawsuits (Gowing 27).¹²⁵ Usually, the slurs at

¹²⁴ For a helpful discussion of Dalila's construction as the Biblical harlot, see Knoppers, "'Sung and Proverb'd For A Fool.'"

¹²⁵ For further background on sexual slander and its gender biases, see Gowing, Domestic Dangers; Meldrum; Rushton; Sharpe, Defamation and Sexual Slander; and Ingram, Church Courts 292-319.

issue, as in the case of Samson Agonistes, revolved around general statements that the woman (usually married) was sexually unchaste, a "whore" or "bawd" (Ingram, Church Courts 302).

Women's growing vulnerability to criminal prosecution for sexual immorality accounts in part for the large number of sexual slander cases in the ecclesiastical courts, as justices of the peace and the church increasingly pursued sexual offenders by the early seventeenth century. A woman accused of whoring could well face criminal investigation and disciplinary proceedings, the slur having put officials on notice that people suspected her of breaking the law. Adultery and fornication constituted serious criminal offenses in the period, and women far more often than men found themselves prosecuted for these offenses (Ingram, Church Courts 306-08). The 1650 Act for "suppressing sins of Incest, Adultery and Fornication" made a wife's adultery or a single woman's fornication a felony, punishable by death (Firth and Rait 387-89). Women, thus, proactively brought defamation suits often out of a fear of disciplinary proceedings. These suits highlight the nefarious nature of Samson's epithets with a power not only to damage a woman's reputation far beyond a modern reader's initial supposition but also to expose her to severe

criminal prosecution.

Historians have suggested that these women-initiated lawsuits indicate the central importance of sexual credit to women's reputations in the period. Such epithets established a chain of associations concerned with women's honesty and served as symbols of all forms of female misbehavior (Gowing 29). Thus, in cases of sexual slander, plaintiffs often alleged that they had also been accused of dressing luxuriously, of pride, immodesty, insubordination and even of unquiet speech (Gowing 29, 32). The Chorus and Samson manage to accuse Dalila of virtually every one of these ancillary "crimes." In so doing, Dalila comes to typify, not merely the criminalized blabber, or, in both Whately's and Samson's words, the "[m]onster" (230; Whately 39) of conduct literature, but the successful plaintiff of a defamation action.

Samson's reference to Dalila as a "*Hyaena*" (748) also directly implicates seventeenth-century defamation law. Considered argumentative, bellicose, and sexually unstable, the hyena gestures to Dalila's crime of scolding (Kluyve 99-101). Samson and the Chorus also repeatedly call Dalila a "viper" (1001), "poysnous bosom snake" (763), "Adder" (936) and "manifest Serpent" (997). The richness of this allusion again resides in its association with scolding,

the serpent emblemizing unwomanly speech, women's "unquiet" tongues and the criminalization and torture of these tongues. Interestingly, women instigated—and won—a not-insignificant number of defamation actions, claiming that they had unfairly endured punishment as scolds (Baker, An Introduction 507).

Dalila correctly proves her case by emphasizing the falsity of Samson's slurs in the eyes of her people:

But in my own country where most desire,
In Ecron, Gaza, Asdod, and in Gath
I shall be nam'd among the famousest
Of Women (980-83).

This rebuttal draws on the standard procedure of "compurgation" routinely used by the ecclesiastical courts in defamation and sexual immorality cases. When the victim of a slander denied the truth of the slur, the courts ordered the victim to produce of a number of the victim's neighbors with actual knowledge of his or her character to swear that they believed the slur to be untrue. Should the victim duly produce such compurgators, then the courts restored the victim's good name (Ingram, Church Courts 51-52, 293, 332-33). Dalila's careful recital of those

individuals who disagreed with Samson's accusations initiates, then, the proper courtroom procedure for defending her reputation. Dalila's defense also serves as a cautionary reminder of the "double-fac't", "double-mouth'd" (971) nature of speech; what constitutes a defamatory slur to one person, or people, constitutes heroic, public speech to another. The criminal categories that prescribe the limits of permissible speech for women in the process are thereby rendered unstable, "double-mouth'd" (971).

The mid-1640's represented a peak in the prosecution of scolds and other unquiet women which only began to lessen after the Civil War, a peak that Catherine Belsey has provocatively suggested coincided with women's agitation for reform of church and state (Belsey, The Subject of Tragedy 178-91). This suggestion has particular bearing on Milton's depiction of Dalila, as she faces many of the same critiques directed against women petitioners to Parliament during the Civil War period. Routinely compared to "whores," the female petitioners' sexual credit often became an issue, as in the case of Mary Overton (Higgins 180). The newspaper "Certaine Informations," for example, described the August 8, 1643 peace demonstration by Shoals of Peace Women as the action of "two or three hundred

oyster wives, and other dirty and tattered sluts."¹²⁶ While another newspaper described these women as mostly "Whores, Bawdes, Oyster-women, Kitchenstuff women, Beggar women, and the very scum of the Suburbs."¹²⁷

Regardless of the actual manner of their conduct or the deferent tone of their petitions, critics compared these women to "a company of Gosops," and their indecorously "reproachful" and "clamorous" language to "scolding."¹²⁸ Newspaper accounts of the women's demonstrations focused on their violent verbal conduct: their "[t]ongues pelted hail,"¹²⁹ and "their tongues must be pratling," for "[t]hey have ever loved to meddle with what they should not from the beginning."¹³⁰ Milton heard these women and absorbed their pleas, as Dalila subtly represents the "unquiet" tongues of these outspoken woman and the chain of inappropriate, because public, speech unleashed by

¹²⁶ "Certaine Informations" no. 30 (August 7-14, 1643), 231, quoted in Davies 63. For further background on female petitioners during the Civil War period, see Higgins; MacArthur; Hughes; Hobby 13-17; and Holstun.

¹²⁷ Quoted in Higgins 190.

¹²⁸ Ibid., 205. See also MacArthur 706.

¹²⁹ Quoted in Higgins 203.

¹³⁰ Ibid., 213.

them.

One can only obliquely surmise Milton's stance towards the women who petitioned Parliament during the Civil War. He specifically referred to these women once, in An Apology Against A Pamphlet (1642), the first year that they actively petitioned Parliament: "the meanest artisans and labourers, at other times also women ... have gone with confidence, that neither their meanness would be rejected, nor their simplicity contemn'd, nor yet their urgency distasted either by the dignity, wisdom, or moderation of that supreme Senate; nor did they depart unsatisfi'd" (l: 926). This statement does indicate at least some initially favorable attitude towards women petitioners, certainly differing from the responses of the women's harshest critics. These critics directed the women to return to their homes, and "look after their own business and meddle with their housewifery,"¹³¹ as "[i]t can never be a good world, when women meddle in States matters."¹³²

Attacking or answering an opponent at trial clearly constituted "meddl[ing] in States matters." Early modern court procedure required combative action and public speech

¹³¹ Quoted in MacArthur 707.

¹³² Quoted in Higgins 213.

on the part of both male and female litigants before a chorus of judges, juries, barristers and witnesses. Women went to court armed with the rhetorical tools and defensive tactics of verbal and legal warfare, intending to protect their names and prosecute their foes. Outspoken Dalila, deftly maneuvering the techniques of trial combat, defends her reputation, refusing to remain the silent victim of her husband's slurs. Her speech acts wrest from conduct literature those stereotypes that she had ostensibly transgressed, sometimes catering to them, sometimes manipulating them to her advantage. The poem, in presenting a female who defends her public speech using the period's accepted method for such defense, then, garrulously transgresses the dominant society's condemnation of and restrictions against women's speaking.

Preoccupied with speaking, Samson Agonistes repeatedly fails to portray action but rather, as the hornets that swarm in Samson's head, assaults the reader with words. Blabbing, accusing, threatening, offending, these words self-referentially explore the subject of speech itself and, in their conscious emulation of the rhetoric of legal indictment, the lawful limits of speech. As the legal prescriptions of public speech and their underlying gender constructs break down, exposed as artificial, relative,

"double-mouth'd" (971), the untamed poem, as Dalila, simply refuses to be bridled.

Epilogue

Milton's Women "At Their Own Law"

But alas, when she hath lost her husband, her
head is cut off, her intellectual part is gone ...
Why mourne you so, you that be widowwes?
Consider how long you have beene in subjection
under the predominance of parents, of your
husbands, now you be free in libertie ... at your
owne Lawe (The lawes resolutions 232).

The hermeneutic oscillations of The lawes resolutions' characterization of the widow, at once embracing orthodox thinking on marital relations and paradoxically radical conclusions, serve as a trope for Milton's own formulation of his female characters—understood in relation to male authority figures and simultaneously "at [their] owne Lawe." Milton, himself, ranges across the territory of acceptable legal constructs in the period and stretches towards the conception of his own law, as his women do not find their heads cut off by the loss of male authority figures but, themselves, cut off the heads of such authority. Re-visioning the limits of authority, patriarchal and royal in nature, Milton helped through his

writing to cut off the head of patriarchal power, thereby leaving himself and the English people widowed. He re-conceptualized paternal authority, allowing a Lady to wander in a dream of orphanhood. He likewise re-formulated marital authority, as he granted Eve access, not only to dreams of freedom, but to concrete proprietary rights (also representing a woman who brings about the "death" of her authority figure) as well as granted Dalila a voice of marital critique (again representing a woman who, if she did not cut off the head of her husband, did cut off his hair).

Mary, in Paradise Regained, in some ways functions as the most independent "widow" in Milton's poetry. She holds rights, as the sole parent and guardian of the Son and owner of her own home, that bear resemblance to those accorded to actual widows in the seventeenth century.¹³³ The poem's elevation of the status of Mary parallels that of the law's elevation of the widow, as the Son's important return "[h]ome to his Mothers house private" (639) emphasizes the particular legal power and authority granted

¹³³ The laws of succession, providing for the widow's inheritance of a percentage of her deceased husband's property, usually granted her life interests in her marital home. A widow also frequently found herself named as the guardian of her children during their minority.

to the widow. As Dayton Haskin has so beautifully demonstrated, Milton's Mary also fulfills an educative function in the poem (again, consonant with the legal duty of a guardian) and voices right reason ("Milton's Portrait" and "Matthew, Mary").

Milton endowed not only Mary but also his other female characters with privileged voices of right reason in his poems. They articulate the longing for and attaining of legal freedom and independence generally denied the seventeenth-century woman. In varying ways, all of Milton's women confront the legal limits imposed on female agency and give voice to dissident and emerging discourses of female autonomy. Milton's poetry, ultimately, re-calibrates gender relations at all of the important stages of a woman's life and allows his female characters to utter critiques of seventeenth-century law.

One of the important claims of the Law and Literature movement is that the integration of these two disciplines is a "cultural necessity" (Dolin 8). In Richard E. Weisberg's words, such interdisciplinary work should lead to a "poethics," or fusion of poetics and ethics, and a re-direction of the study of literature to social and cultural values. Weisberg's poethics has "distinctively humanistic aspirations" (Minda 158) in its commitment to "emancipation

through dialogue (Dolin 9). Milton's women, in their voicing of the iniquities of legally induced gender constructions, many of which persist in our society today, display Weisberg's capacity for emancipation through dialogue. Milton himself, spokesperson of radical politics and, indeed radical gender politics, is an early proponent of the Law and Literature movement, believing throughout his life in the power of dialogue to change the world. As this study has emphasized, his poetry gives birth to laws that, while authored by a man, lean towards emancipation for women.

WORKS CITED

a. Primary Sources

A warning for all desperate Women. By the example of Alice Davis who for killing her husband was burned in Smithfield the 12 of July 1628. To the terror of all the beholders. To the tune of the Ladies Fall. London, 1628.

A Treatise of feme covert: or, The Lady's Law. London: 1732.

Baker, J. H. and S. F. C. Milsom. Sources of English Legal History: Private Law to 1750. London: Butterworths, 1986.

Barker, Jane. "A virgin Life." The Cultural Identity of Seventeenth-Century Woman: A Reader. Ed. N. H. Keeble. London, Routledge, 1994.

Baron and Feme: A Treatise of the Common Law Concerning Husbands and Wives. 3rd ed. London, 1738.

Baxter, Richard. A Christian Directory. London, 1673.

Blackstone, William. Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769. Vols. I-IV. Chicago: The U of Chicago P, 1979.

Blake, Thomas. Vindiciae Foederis. London, 1653.

Blith, W. A. The English Improver Improved; Or The Survey of Husbandry Surveyed. London, 1652.

Bond, Ronald B. Certain Sermons or Homilies (1547) and A Homily against Disobedience and Wilful Rebellion (1570). Toronto: U of Toronto P, 1987.

Brathwaite, Richard. The English Gentlewoman. London, 1631.

Burton, Richard. The Anatomy of Melancholy. Vol. I. Kila, Mt.: Kessinger Publishing Co., 1986.

Carew, Thomas. "A Rapture." Minor Poets of the Seventeenth Century. Ed. R. G. Howarth. London: Everyman's Library, 1969.

Certain Sermons or Homilies Appointed to be Read in Churches in the Time of Queen Elizabeth. London: Society for Promoting Christian Knowledge, 1908.

Church of England, Certain Sermons or Homilies. London: Society for Promoting Christian Knowledge, 1908.

Clancy, James. A Treatise of the Rights, Duties, and Liabilities of Husband and Wife. At Law and in Equity. 3rd. ed. New York: Treadway & Bogert, 1828.

Cleaver, Robert. A Godly Form of Household Governement. London: 1612.

Cleveland, Arthur Rackham. Women Under the English Law From the Landing of the Saxons to the Present Time. Littleton, CO: F. B. Rothman & Co., 1987.

Coke, Sir Edward. The Institutes of the Laws of England. London: E.R. Brooke, 1797 (1st ed. 1628-44).

Dekker. The Witch of Edmonton. London, 1658.

Digges, Sir Dudley. The Unlawfulness of Subjects Taking up Armes against their Souveraigne. London, 1644.

East, Sir Edward Hyde. A Treatise of the Pleas of the Crown. Vol. 1. London, 1803.

Edgerton, Sarah. "The Emulation." The Cultural Identity of Seventeenth-Century Woman: A Reader. Ed. N. H. Keeble. London: Routledge, 1994.

Elton, G. R. The Tudor Constitution: Documents and Commentary. Cambridge: Cambridge UP, 1982.

Fielding, Henry. Amelia. Oxford: Basil Blackwell, 1926.

[Finch, Anne]. "The Petition for an Absolute Retreat." The Cultural Identity of Seventeenth-Century Woman: A Reader. London: Routledge, 1994.

Firth, C. H. and R. S. Rait, eds. Acts and Ordinances of the Interregnum. London: 1911.

Gataker, Thomas. Marriage Duties Briefely couched together. London, 1620.

Geis Gilbert, and Bunn, Ivan. A Trial of Witches: A Seventeenth-Century Witchcraft Prosecution. London: Routledge, 1997.

The Geneva Bible, A Facsimile of the 1560 Edition. Madison: U of Wisconsin P, 1969.

Gouge, William. Of Domesticall Duties. London: 1622.

Hale, Sir Mathew. Historia Placitorum Coronae ... History of the Pleas of the Crown. Vol. I. Ed. Sollom Emlyn. Dublin, 1778.

Holdsworth, W. S. A History of English Law. Vo. III. Boston, Little, Brown and Co. 1923.

The Incomparable Jewell. London, 1632.

Institoris Heinrich, and Sprenger, Jakob. Malleus Maleficarum. Trans. Rev. Montague Summers. New York: Dover, 1971.

The lawes resolutions of womens rights: or, The lawes provision for woemen. London: 1632.

The Laws Respecting Women. London, 1777.

Lee, Joseph. The Inclosure of Catthorp: Or A Vindication of A Regulated Inclosure. London, 1656.

Leigh, Dorothy. The Mothers Blessing. Or the godly counsaile of a Gentlewoman not long since deceased, left behind her for her Children. London, 1616.

Lilburne, John. Regall Tyrannie Discovered. London, 1647.

Lilly, John. The Practical Register: or, A General Abridgment of the Law. Vol. 2. London, 1719.

Locke, John. Two Treatises of Government. Ed. Peter Laslett. Cambridge: Cambridge UP, 1963.

Marvell, Andrew. "Last Instructions to a Painter." London, 1667.

Milton, John. The Complete Poetry of John Milton. Ed. John T. Shawcross. Garden City, New York: Doubleday, 1971.

---. The Complete Prose Works of John Milton. 8 vols. Eds. Don M. Wolfe et al. New Haven: Yale UP, 1953-82.

---. The Riverside Milton. Ed. Roy Flannagan. Boston: Houghton Mifflin, 1988.

Moore, Adam. Bread for the Poor. And Advancement of the English Nation Promised By Enclosure of the Wastes and Common Grounds of England. London, 1653.

[N. H.] The Ladies Dictionary. London, 1694.

Overton, Richard. The Commoners Complaint. London, 1647.

Pastan, Linda. Aspects of Eve. New York: Liveright, 1970.

Pocock, J. G. A. The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century. Cambridge: Cambridge UP, 1957.

Rastell, John. Les Termes de la Ley; or, Certaine Difficult and Obscure Words and Termes of the Common Laws of this Realme Newly Printed. London, 1624.

Scot, Reginald. The discoverie of witchcraft. London, 1584.

Shakespeare, William. The Complete Works of William Shakespeare. Ed. William Aldis Wright. New York: Doubleday, 1936.

S. T. Common-Good: or, The Improvement of Commons, Forrests, and Chases, by Inclosure. London, 1652.

Standish, Arthur. The Commons Complaint. 3d. ed. London, 1611.

Stephen, H. L., ed. State Trials Political and Social in Two Volumes. London: Duckworth and Co., 1899.

Stephen, James Fitzjames. A History of the Criminal Law of England. In Three Volumes. London: Macmillan and Co., 1883.

"The Crafty Maid." The Roxburgh Ballads. Vol. 8. Eds. W. Chappell and J. Ebsworth. London and Hertford, 1866-99.

The Sufferer's Legacy to Surviving Sinners: or, Edmund Kirk's Dying Advice to Young Men. London, 1684.

Swinburne, Henry. A Treatise of Spousals, or Matrimonial Contracts: Wherein All the Questions Relating to that Subject Are Ingeniously Debated and Resolved. London, 1686.

Tanner, Joseph R., ed. Tudor Constitutional Documents, A.D. 1485-1603, with an Historical Commentary. 2d ed. Cambridge: Cambridge UP, 1930.

Thornton, Alice. Autobiography of Mrs. Alice Thornton of East Newtown, Co. York. London, 1873.

Tilney, Edmund. A brief and pleasant discourse of duties in Mariage, called the Flower of Friendship. Ed. and Intro. Valerie Wayne. London, 1568.

Vives, Juan Luis. Instruction of a Christian Woman. Trans. Richard Hyrde. London, 1529.

Walpole, Horace. The Letters of Horace Walpole, Fourth Earl of Oxford. Vol. 15. Ed. Paget Toynbee. Oxford: Clarendon, 1905.

Whately, William. A Bride Bush. Or, A Direction for Married Persons. London, 1623.

Wing, John. The Crowne Conivgall or, The Spovse Royall. A Difcovery of the true honor and happiness of Christian Matrimony. London, 1632.

Winstanley, Gerrard. The Works of Gerrard Winstanley, With an Appendix of Documents Relating to the Digger Movement. Ed. George H. Sabine. Ithaca: Cornell UP, 1941.

The Wonderful Discoverie of the Witchcrafts of Margaret and Philip Flower, Daughters of Joan Flower. London, 1619.

Woodhouse, A. S. P., ed. Puritanism and Liberty, Being the Army Debates (1647-49) with Supplementary Documents. London: Dent, 1938.

Zouche, Richard. Cases and Questions Resolved in the Civil-Law. Oxford, 1652.

b. Secondary Sources

Allen, Robert C. Enclosure and the Yeoman. Oxford: Clarendon P, 1992.

Almond, Philip C. Adam and Eve in Seventeenth-Century Thought. Cambridge: Cambridge UP, 1999.

Amussen, Susan. An Ordered Society: Gender and Class in Early Modern England. New York: Columbia UP, 1993.

---. "'Being stirred to much unquietness': violence and domestic violence in early modern England." Journal of Women's History 6 (1994): 70-89.

Appleby, Joyce Oldham. Economic Thought and Ideology in Seventeenth Century England (Princeton: Princeton UP, 1978).

Aylmer, G. E. "The Meaning and Definition of 'Property' in Seventeenth-Century England," Past & Present 86 (1980): 87-97.

Baker, J. H. An Introduction to English Legal History, 3rd ed. London: Butterworths, 1990.

---. "Criminal Courts and Procedure at Common Law," Crime in England 1550-1800. Ed. J. S. Cockburn. London: Methuen, 1977. 15-48.

Barker, Francis. The Tremulous Private Body: Essays on Subjection. Ann Arbor: U of Michigan P, 1995.

Barry, J. Witchcraft in Early Modern Europe: Studies in Culture and Belief. Cambridge: Cambridge UP, 1995.

Bashar, Nazife. "Rape in England Between 1550 and 1700." The Sexual Dynamics of History: Men's Power, Women's Resistance. Ed. The London Feminist History Group. London: Pluto P, 1983. 28-42.

Beattie, H. M. Crime and the Courts in England, 1550-1800. Princeton: Princeton UP, 1986.

Belsey, Catherine. John Milton: Language, Gender, Power. Oxford: Basil Blackwell, 1988.

---. The Subject of Tragedy: Identity and Difference in Renaissance Drama. London: Methuen, 1985.

Bender, Leslie. "A Lawyer's Primer on Feminist Theory and Tort." Feminist Legal Theory: Foundations. Ed. D. Kelly Weisberg. Philadelphia: Temple UP, 1993. 58-74.

- Bennett, Judith M. and Amy M. Froide. Singlewomen in the European Past, 1250-1800. Philadelphia: U of Pennsylvania P, 1999.
- Bermingham, Ann. "System, Order, and Abstraction: The Politics of English Landscape Painting Around 1795." Landscape and Power. Ed. W. J. T. Mitchell. 77-101.
- Berry, Philippa. Of Chastity and Power: Elizabethan Literature and the Unmarried Queen. New York: Routledge, 1989.
- Blomley, Nicholas K. Law, Space and the Geographies of Power. New York: Guilford P, 1994.
- Boose, Lynda E. "Scolding Brides and Bridling Scolds: Taming the Woman's Unruly Member." Shakespeare Quarterly 42.2 (Summer 1991): 179-213.
- Bottomley, Anne. "Figures in a Landscape: Feminist Perspectives on Law, Land and Landscape." Feminist Perspectives on the Foundational Subjects of Law. Ed. Anne Bottomley. London: Cavendish, 1996. 109-24.
- Bowen, Catherine Drinker. The Lion and the Throne. Boston: Little Brown, 1956.
- Breasted, Barbara. "Comus and the Castlehaven Scandal." Milton Studies III (1971): 201-24.
- Brown, Cedric C. John Milton's Aristocratic Entertainments. Cambridge: Cambridge UP, 1985.
- Burke, Peter. Popular Culture in Early Modern Europe. New York: Harper & Row, 1978.
- Campbell, Ruth. "Sentence of Death by Burning for Women." The Journal of Legal History 5.1 (May 1984): 44-59.
- Catty, Jocelyn. Writing Rape, Writing Women in Early Modern England: Unbridled Speech. New York: St. Martin's P, 1999.

- Cioni, Maria L. "The Elizabethan Chancery and Women's Rights." Tudor Rule and Revolution: Essays for G.R. Elton and His American Friends. Eds. D. Guth and J. McKenna. Cambridge: Cambridge UP, 1982. 159-82.
- . Women and Law in Elizabethan England With Particular Reference to the Court of Chancery. New York: Garland, 1985.
- Clark, Anna. "Humanity or Justice? Wifebeating and the law in the eighteenth and nineteenth centuries." Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality. Ed. Carol Smart. London: Routledge, 1992. 187-206.
- Clark, Stuart. "Inversion, Misrule and the Meaning of Witchcraft." Past & Present 87 (May 1980): 98-127.
- Clarkson, P. S. The Law of Property in Shakespeare and the Elizabethan Drama.
- Cover, Robert M. "Nomos and Narrative." Harvard Law Review 97 (1983-84). 4-68.
- Creaser, John. "Milton's Comus: The Irrelevance of the Castlehaven Scandal." Milton Quarterly 21: 4 (Dec. 1987): 24-34.
- Davies, Margaret. "Feminist Appropriations: 'Law, Property and Personality.'" Social and Legal Studies (1994).
- Davies, Stevie. Images of Kingship in Paradise Lost: Milton's Politics and Christian Liberty. Columbia: U of Missouri P, 1983.
- . Unbridled Spirits: Women of the English Revolution, 1640-1660. London: The Women's P, 1998.
- Davis, Cushman Kellogg. The Law in Shakespeare. New York: AMS P, 1972.

- Davis, K. M. "Continuity and Change in Literary Advice on Marriage." Marriage and Society: Studies in the Social History of Marriage. Ed. R. B. Outhwaite. London: Europa, 1981. 58-80.
- Davis, Natalie Zemon. Society and Culture in Early Modern France. Stanford: Stanford UP, 1975.
- Demaray, Hannah Disinger. "The Literary Gardens of Andrew Marvell and John Milton." Gardens and Culture: Eight Studies in History and Aesthetics. Ed. Hannah Disinger Demaray. Beirut: The Eastern P, 1969. 115-42.
- Dickenson, Donna. Property, Women and Politics. New Brunswick, N.J.: Rutgers UP, 1997.
- DiSalvo, Jackie. "Fear of Flying: Milton on the Boundaries Between Witchcraft and Inspiration." ELR 18 (1988): 114-37.
- . "Intestine Thorn: Samson's Struggle with the Woman Within." Milton and the Idea of Woman. Ed. Julia Walker. Chicago: The U of Chicago P, 1988. 211-29.
- . "Make War Not Love: On Samson Agonistes and The Caucasian Chalk Circle." Milton Studies XXVI (1990): 239-51.
- Dobranski, Stephen B. "Licensing Milton's Heresy." Milton and Heresy. Eds. Stephen B. Dobranski and John P. Rumrich. Cambridge: Cambridge UP, 1998. 139-58.
- Dolan, Frances E. Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700. Ithaca: Cornell UP, 1994.
- . "Gender, Moral Agency, and Dramatic Form in A Warning For Fair Women." Studies in English Literature 29.2 (Spring 1989): 201-18.

---. "'Gentlemen, I have one more thing to say': Women on Scaffolds in England, 1563-1680." Modern Philology 92.2 (November 1994): 157-78.

Dolin, Keiran. Fiction and the Law: Legal Discourse in Victorian and Modernist Literature. Cambridge: Cambridge UP, 1999.

Dollimore, Jonathan. Radical Tragedy: Religion, Ideology and Power in the Drama of Shakespeare and His Contemporaries. 2d ed. Durham: Duke UP, 1993.

Donaldson, Ian. The World Turned Upside Down: Comedy from Jonson to Fielding. Oxford: Clarendon P, 1970.

Doody, Margaret Anne. "'Those Eyes Are Made So Killing': Eighteenth-Century Murderesses and the Law." The Princeton University Library Chronicle 46.1 (1984-1985): 49-80.

Duncan, Joseph. Milton's Earthly Paradise: A Historical Study of Eden. Minneapolis: U of Minnesota P, 1972.

Durstun, Chris. "'Unhallowed Wedlocks': The Regulation of Marriage During the English Revolution." Historical Journal 31.1 (1988): 45-59.

DuRocher, Richard J. "Careful Plowing: Culture and Agriculture in Paradise Lost." Milton Studies XXXI (1994): 91-107.

Dyson, A. E. "The Interpretation of Comus." A Masque at Ludlow Castle: Essays on Milton's Comus. Ed. John Diekhoff. Cleveland: Case Western UP 1968. 102-25.

Erickson, Amy Louise. Women and Property in Early Modern England. London: Routledge, 1994.

Evans, J. Martin. Milton's Imperial Epic: Paradise Lost and the Discourse of Colonialism. Ithaca: Cornell UP, 1996.

- Evershed, Lord. "Foreword." A Century of Family Law. R.H. Graveson and F. R. Crame. London: Sweet and Maxwell, 1957.
- Faller, Lincoln B. Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England. Cambridge: Cambridge UP, 1987.
- Fish, Stanley. "Fish v. Fiss." Stanford Law Review 36 (July 1984): 1325-47.
- . "Question and Answer in Samson Agonistes." The Critical Quarterly II.3 (Autumn 1969): 237-65.
- . "Spectacle and Evidence in Samson Agonistes." Critical Inquiry 15 (Spring 1999): 556-86.
- Fitter, Chris. Poetry, Space, Landscape: Towards A New Theory. Cambridge: Cambridge UP, 1995.
- Fitz, L. "What Says the Married Woman? Marriage Theory and Feminism in the English Renaissance." Mosaic 13 (1980): 1-22.
- Fletcher, Anthony. Gender, Sex and Subordination in England 1500-1800. New Haven: Yale UP, 1995.
- Fletcher, George P. "The Case for Treason." Maryland Law Review 41: 2 (1982): 193-208.
- Flosdorf, J. W. "'Gums of Glutinous Heat': A Query." Milton Quarterly 7 (1973): 4-5.
- Foucault, Michel. Discipline & Punish: The Birth of the Prison. New York: Vintage Books, 1979.
- . The History of Sexuality: An Introduction. Trans. Robert Hurley. New York: Vintage Books, 1980.
- . Power / Knowledge: Selected Interviews & Other Writings: 1972-1977. New York: Pantheon Books, 1972.

- Foyster, Elizabeth. "A laughing matter? Marital discord and gender control in seventeenth-century England." Rural History 4 (1993): 5-21.
- . "Male honour, social control and wife beating in late Stuart England." Transactions of the Royal Historical Society. 6th series, 6 (1996): 215-24.
- French, J. Milton. Milton in Chancery: New Chapters in the Lives of the Poet and his Father. New York: The Modern Language Association, 1939.
- Gale, Jesse Caitlin. "'Mere Moral Babble:' *Comus* and Moral Debates of the Body." Diss. Yale U, 1999.
- Gallagher, Philip J., Milton, the Bible, and Misogyny. Eds. Eugene R. Cunnar and Gail L. Mortimer. Columbia: U of Missouri P, 1990.
- Gavigan, Shelly A. M. "Petit Treason in Eighteenth Century England: Women's Inequality Before the Law." Canadian Journal of Women and the Law 3 (1989-1990): 335-373.
- Gilbert, Sandra M. and Susan Gubar. The Madwoman in the Attic: The Woman Writer and the Nineteenth-Century Literary Imagination. New Haven: Yale UP, 1979.
- Glanz, Leonore Marie. "The Legal Position of English Women Under the Early Stuart Kings and the Interregnum, 1603-1660." Diss. Loyola U, 1973.
- Goodrich, Peter. "Gender and Contracts." Feminist Perspectives on the Foundational Subjects of Law. Ed. Anne Bottomley. London: Cavendish Publishing, 1996. 17-46.
- Goody, J. "Inheritance, Property and Women: Some Comparative Considerations." Family and Inheritance: Rural Society in Western Europe, 1200-1800. Eds. J. Goody, Joan Thirsk and E. P. Thompson. Cambridge: Cambridge UP, 1976. 10-36.

- Gough, J. W. The Social Contract: A Critical Study of its Development. Westport: Greenwood P, 1978.
- Gowing, Laura. Domestic Dangers: Women, Words, and Sex in Early Modern London. Oxford: Oxford UP, 1996.
- Graham, Rose. "The Civic Position of Women at Common Law Before 1800." English Ecclesiastical Studies. Ed. Rose Graham. London: Society for the Propagation of Christian Knowledge, 1929. 360-77.
- Greenberg, Janelle. "The Legal Status of the English Woman in Early Eighteenth Century Common Law and Equity." Studies in Eighteenth Century Culture 4 (1975): 171-81.
- Guillory, John. "Dalila's House: Samson Agonistes and the Sexual Division of Labor." Rewriting the Renaissance: The Discourses of Sexual Difference in Early Modern Europe. Eds. Margaret W. Ferguson, Maureen Quilligan and Nancy J. Vickers. Chicago: The U of Chicago P, 1986. 106-22.
- Haller, William. Liberty and Reformation in the Puritan Revolution. New York: Columbia UP, 1955.
- Halley, Janet, E. "Female Autonomy in Milton's Sexual Politics." Milton and the Idea of Woman. Ed. Julia M. Walker. Urbana and Chicago: U of Illinois P, 1988. 230-45.
- Halpern, Richard. "Puritanism and Maenadism in A Mask." Rewriting the Renaissance: The Discourse of Sexual Difference in Early Modern Europe. Eds. Margaret W. Ferguson, Maureen Quilligan and Nancy J. Vickers. Chicago: u of Chicago P, 1986. 88-105.
- Hamilton, Gary D. "Paradise Regained and the Private Houses." Of Poetry and Politics: New Essays on Milton and His World. Ed. P. G. Stanwood. Binghamton, NY: Medieval and Renaissance Texts and Studies, 1995. 239-48.

Harris, Barbara, J. "Women and Politics in Early Tudor England." The Historical Journal 33.2 (1990): 259-81.

Haskin, Dayton. "Matthew, Mary, Luke and John: The Mother of the Work in Milton's Poetry." Proceedings of the PMR Conference: Annual Publication of the International Patristic Medieval and Renaissance Conference. Villanova, PA: PPMRC, 1985. 75-86.

---. "Milton's Portrait of Mary as a Bearer of the Word." Milton and the Idea of Woman. Ed. Julia M. Walker. Urbana: U of Illinois P, 1988. 169-84.

Herrup, Cynthia B. The Common Peace: Participation and the Criminal Law in Seventeenth-Century England. Cambridge: Cambridge UP, 1987.

---. A House in Gross Disorder: Sex, Law, and the 2nd Earl of Castlehaven. Oxford: Oxford UP, 1999.

---. "Law and Morality in Seventeenth-Century England." Past and Present 106 (February 1985): 102-23.

Higgins, Patricia. "The Reaction of Women, with Special Reference to Women Petitioners." Politics, Religion and the English Civil War. Ed. Brian Manning. London: Edward Arnold, 1973. 179-221.

Hill, Christopher. Milton and the English Revolution. New York: Viking P, 1977.

---. Puritanism and Revolution: Studies in Interpretation of the English Revolution of the Seventeenth Century. London: Mercury Books, 1958.

---. Society and Puritanism in Pre-Revolutionary England. New York: Schocken Books, 1967.

---. The World Turned Upside Down. New York: Viking P, 1972.

- Hobby, Elaine. Virtue of Necessity: English Women's Writing 1646-1688. London: Virago, 1988.
- Hogreve, Pearl. "The Legal Rights of Tudor Women and their Circumvention by Men and Women." The Sixteenth Century Journal 3 (1972): 97-105.
- . Tudor Women: Commoners and Queens. Ames: The Iowa State UP, 1975.
- Holstun, James, ed. Pamphlet Wars: Prose in the English Revolution. London: F. Cass, 1992.
- Honore, A. M. "Ownership." Oxford Essays in Jurisprudence. Ed. A. G. Guest. Oxford: Oxford UP, 1961. 107-47.
- Horne, Thomas A. Property Rights and Poverty: Political Argument in Britain, 1603-1834. Chapel Hill: U of North Carolina P, 1983.
- Houlbrooke, Ralph A. Church Courts and the People During the English Reformation 1520-1570. Oxford: Oxford UP, 1979.
- . "The Making of Marriage in Mid-Tudor England: Evidence from the Records of Matrimonial Contract Litigation." Journal of Family History 10 (1985): 339-52.
- Hughes, Ann. "Gender and Politics in Leveller Literature." Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown. Eds. Susan D. Amussen and Mark A. Kishlansky. Manchester: Manchester UP, 1995. 162-88.
- Hull, Suzanne W. Chaste, Silent and Obedient: English Books for Women, 1475-1640. San Marino, CA.: Huntington Library, 1982.
- Hunt, Margaret. "Wife Beating, Domesticity and Women's Independence in Eighteenth Century London." Gender & History 4.1 (Spring 1992): 10-33.

Ingram, M. Church Courts, Sex and Marriage in England 1570-1640. Cambridge: Cambridge UP, 1988.

---. "Ridings, Rough Music and the 'Reform of Popular Culture' in Early Modern England." Past & Present 105 (November 1984): 166-97.

---. "'Scolding Women Cucked or Washed': A Crisis in Gender Relations in Early Modern England." Women, Crime and the Courts. Eds. Jenny Kermode and Garthine Walker. Chapel Hill: U of North Carolina P, 1994. 48-80.

Ikegami, "Robin. Femmes-Hommes, She-Bishops, and Hyenas in Petticoats: Women Reformers and Gender Treason, 1789-1830." Women's Studies: An Interdisciplinary Journal 26:2 (1997): 223-39.

Jacobus, Lee A. Sudden Apprehension: Aspects of Knowledge in Paradise Lost. Paris: Moulton, 1976.

Jankowski, Theodora A. Pure Resistance: Queer Virginity in Early Modern English Drama. Philadelphia: U of Pennsylvania P, 2000.

Jones, M. G. Hannah More. Cambridge: Cambridge UP, 1952.

Kahn, Paul W. Law and Love: The Trials of King Lear. New Haven: Yale UP, 2000.

Kahn, Victoria. "The Metaphorical Contract in Milton's Tenure of Kings and Magistrates." Milton and Republicanism. Eds. David Armitage, Armand Himy and Quentin Skinner. Cambridge: Cambridge UP, 1995. 82-105.

Karlsen, Carol F. The Devil in the Shape of a Woman: Witchcraft in Colonial New England. New York: W. W. Norton & Co., 1987.

Kelly, Kathleen Coyne and Marina Leslie. "Introduction." Menacing Virgins: Representing Virginity in the Middle Ages and Renaissance. Eds. Kathleen Coyne and Marina Leslie. Newark: U of Delaware P, 1999. 15-25.

- Kendrick, Christopher. "Milton and Sexuality: A Symptomatic Reading of Comus." Re-Membering Milton: Essays on the Texts and Traditions. Eds. Mary Nyquist and Margaret W. Ferguson. New York: Methuen, 1987. 43-73.
- Kerridge, Eric. The Agricultural Revolution. London: George Allen & Unwin, 1978.
- Kerrigan, William. "The Politically Correct Comus: A Reply to John Leonard." Milton Quarterly 27: 4 (December 1993): 147-53.
- . The Sacred Complex: On the Psychogenesis of Paradise Lost. Cambridge, MA: Harvard UP, 1983.
- Kim, Julie. "The Lady's Unladylike Struggle: Redefining Patriarchal Boundaries in Milton's Comus." Milton Studies XXXV (1997): 1-20.
- Klare, Karl E. "Law-Making as Praxis." Telos, 40 (1979): 128. 125-35.
- Klein, Joan Larsen. Daughters, Wives, and Widows: Writings by Men about Women and Marriage in England: 1500-1640. Urbana: U of Illinois P, 1992.
- Knoppers, Laura Lunger. Historicizing Milton: Spectacle, Power, and Poetry in Restoration England. Athens: U of Georgia P, 1994.
- . League With You I Seek: Milton's Concept of Covenant. Diss. Harvard U, 1986.
- . "'Sung and Proverb'd For A Fool': Samson Agonistes and Solomon's Harlot." Milton Studies XXVI (1990): 239-51.
- . "'This So Horrid Spectacle': Samson Agonistes and the Execution of the Regicides." English Language Review 20.3 (Autumn, 1990): 487-504.

- Kranidas, Thomas. "Dalila's Role in Samson Agonistes." Studies in English Literature VI (1966): 125-37.
- Le Comte, Edward. "An Exchange of Letters By Sex Obsessed." Milton Quarterly 8.2 (May 1974): 55-6.
- Leonard, John. "'Good Things': A Reply to William Kerrigan." Milton Quarterly 30.3 (1996): 117-27.
- . "Saying No to Freud: Milton's A Mask and Sexual Assault." Milton Quarterly 25 (1991): 129-40.
- Lewalski, Barbara. "Milton On Women—Yet Again." Problems for Feminist Criticism. Ed. Sally Minogue. London: Routledge, 1990. 46-69.
- . "Milton on Women—Yet Once More." Milton Studies VI (1974): 3-20.
- Lieb, Michael. "Milton and Covenant: the Christian View of Old Testament Theology." Milton Studies VII (1975): 233-65.
- . "Paradise Lost and the Myth of Prohibition." Milton Studies VII (1975): 233-65.
- Loewenstein, David A. "The Revenge of the Saint: Radical Religion and Politics in Samson Agonistes." Milton Studies XXXII (1996): 159-80.
- . "Treason Against God and State: Blasphemy in Milton's Culture and Paradise Lost." Milton and Heresy. Eds. Stephen Dobranski and John P. Rumrich. Cambridge: Cambridge UP, 1998. 176-98.
- Loughlin, Marie H. Hymeneutics: Interpreting Virginity on the Early Modern Stage. Lewisburg: Bucknell UP, 1997.
- Low, Anthony. "Agricultural Reform and the Love Poems of Thomas Carew; With an Instance from Lovelace." Culture and Cultivation in Early Modern England: Writing and the

Land. Eds. Michael Leslie and Timothy Raylor. Leicester: Leicester UP, 1992. 63-80.

---. The Georgic Revolution. Princeton: Princeton UP, 1985.

MacArthur, E. "Women Petitioners of the Long Parliament." English Historical Review 24 (1909): 698-704.

Macfarlane, Alan. Marriage and Love in England: Modes of Reproduction 1300-1840. New York: Basil Blackwell, 1986.

---. Witchcraft in Tudor and Stuart England: a regional and comparative study. London: Routledge, 1970.

MacKinnon, Catherine A. "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence." Signs 8.4 (Summer 1983): 635-58.

Malcolmson, Christina. "The Garden Enclosed / The Woman Enclosed." Enclosure Acts: Sexuality, Property, and Culture in Early Modern England. Eds. Richard Burt and John Michael Archer. Ithaca, Cornell UP, 1994, 251-69.

Marcus, Leah. "The Earl of Bridgewater's Legal Life: Notes toward a Political Reading of Comus." Milton Quarterly 21: 4 (Dec. 1987): 24-34.

---. "The Milieu of Milton's Comus: Judicial Reform at Ludlow and the Problem of Sexual Assault." Criticism: A Quarterly for Literature and the Arts. 25.4 (Fall 1983): 293-327.

Marcus, Richard L. "The Tudor Treason Trials: Some Observations on the Emergence of Forensic Themes." University of Illinois Law Review (1984): 675-704.

Mason, John B. "Multiple Perspectives in Samson Agonistes: Critical Attitudes Toward Dalila." Milton Studies X (1977): 23-33.

McColley, Diane Kelsey. A Gust for Paradise: Milton's Eden and the Visual Arts. Urbana: U of Illinois P, 1993.

---. Milton's Eve. Urbana: U of Illinois P, 1983.

McCrae, Andrew. "Husbandry Manuals and the Language of Agrarian Improvement." Culture and Cultivation in Early Modern England: Writing and the Land. Eds. Michael Leslie and Timothy Raylor. Leicester: Leicester UP, 1992. 35-62.

Meldrum, Tim. "A woman's court in London: defamation at the Bishop of London's consistory court, 1700-1745." The London Journal 19 (1994): 1-22.

Mendelson, Sara and Patricia Crawford. Women in Early Modern England 1550-1720. Oxford: Clarendon, 1998.

Menefee, Samuel Pyeatt. Wives for Sale: An Ethnographic Study of British Popular Divorce. Oxford: Blackwell, 1981.

Miller, Milton. "A Contrary Blast: Milton's Dalila." Drama, Sex and Politics. Ed. James Redmond. Cambridge: Cambridge UP, 1985. 93-108.

Miller, Nancy Weitz. "Chastity, Rape, and Ideology in the Castlehaven Testimonies and Milton's Ludlow Mask." Milton Studies XXXII (1995): 153-68.

Miller, Perry. Errand into the Wilderness. Cambridge, Mass: The Belknap P of Harvard UP, 1956.

Minda, Gary. Postmodern Legal Movements: Jurisprudence at Century's End. New York: New York UP, 1996.

Mitchell, W. J. T. "Imperial Landscape." Landscape and Power. Ed. W. J. T. Mitchell. Chicago: The U of Chicago P, 1994. 5-34

- Mossman, Mary Jane. "Feminism and Legal Method." Feminist Legal Theory: Foundations. Ed. D. Kelly Weisberg. Philadelphia: Temple UP, 1993. 539-49.
- Mundhenk, Rosemary Karmelich. "Dark Scandal and the Sun-clad Power of Chastity: The Historical Milieu of Milton's Comus." SEL 15 (1975): 141-52.
- Nedelsky, Jennifer. "Law, Boundaries, and the Bounded Self." Representations 30 (Spring 1990): 162-89.
- Notestein, Wallace. A History of Witchcraft in England from 1558-1718. New York: Russell & Russell, 1965.
- Nyquist, Mary. "The Genesis of Gendered Subjectivity in the Divorce Tracts and in Paradise Lost." Critical Essays on John Milton. Ed. Christopher Kendrick. New York: G. K. Hall & Co., 1987. 164-93.
- O'Donovan, Katherine. "The Male Appendage-- Legal Definitions of Women." Fit Work for Women. Ed. Sandra Burman. London: Croom Helm for Oxford U Women's Studies Committee, 1979. 134-52.
- . Sexual Divisions in Law. London: Weidenfeld and Nicolson, 1985.
- Orlin, Lena Cowen. Private Matters and Public Culture in Post-Reformation England. Ithaca: Cornell UP, 1994.
- Outhwaite, R. B. Marriage and Society: Studies in the Social History of Marriage. New York: St. Martin's P, 1982.
- Overton, Mark. Agricultural Revolution in England: The Transformation of the Agrarian Economy 1500-1850. Cambridge: Cambridge UP, 1996.
- Pateman, Carole. The Sexual Contract. Stanford: Stanford UP, 1988.

Patterson, Annabel. Early Modern Liberalism. Cambridge: Cambridge UP, 1997.

---. Censorship and Interpretation: The Conditions of Writing and Reading in Early Modern England. Madison: U of Wisconsin P, 1984.

---. Reading Between the Lines. Madison: U of Wisconsin P, 1993.

Phillips, O. Hood. Shakespeare and the Lawyers. London: Methuen, 1972.

Posner, Richard. The Economics of Justice. Cambridge: Harvard UP, 1981.

Powell, Chilton Latham. English Domestic Relations 1487-1653: A Study of Matrimony and Family Life in Theory and Practice as Revealed by the Literature, Law, and History of the Period. New York: Columbia UP, 1917.

Prall, Stuart. The Agitation for Law Reform During the Puritan Revolution, 1640-1660. The Hague, 1966.

Reeve, Andrew. "Debate: The Meaning and Definition of 'Property' In Seventeenth-Century England." Past & Present 89 (1983). 139-42.

Rogers, John. "The Enclosure of Virginité: The Poetics of Sexual Abstinence in the English Revolution." Enclosure Acts: Sexuality, Property, and Culture in Early Modern England. Eds. Richard Burt and John Michael Archer. Ithaca: Cornell UP, 1994. 229-50.

Rose, Gillian. Feminism and Geography: The Limits of Geographical Knowledge. Minneapolis: U of Minnesota P, 1993.

Rose, Mary Beth. "'Vigorous Most / When Most Unactive Deem'd': Gender and the Heroics of Endurance in Milton's Samson Agonistes, Aphra Behn's Oroonoko and Mary

- Astell's Reflections Upon Marriage." Milton Studies XXX (1997): 83-100.
- Rosenblatt, Jason P. Torah and Law in Paradise Lost. Princeton: Princeton UP, 1994.
- Rushton, Peter. "Women, witchcraft and slander in early modern England: cases from the church courts of Durham, 1560-1675." Northern History 18 (1982): 116-32.
- Salmon, Marylynn. Women and the Law of Property. Chapel Hill: U of North Carolina P, 1986.
- Samuel, Irene. "Samson Agonistes as Tragedy." Calm of Mind: Tercentenary Essays in Honor of John S. Diekhoff. Ed. Joseph A. Wittreich. Cleveland: Case Western Reserve UP, 1971. 235-57.
- Scales, Ann C. "The Emergence of Feminist Jurisprudence: An Essay." Feminist Legal Theory: Foundations. Ed. D. Kelly Weisberg. Philadelphia: Temple UP, 40-57.
- Schochet, Gordon J. Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England. Oxford: Oxford UP, 1975.
- . "The Significant Sounds of Silence: The Absence of Women from the Political Thought of Sir Robert Filmer and John Locke (or, 'Why Can't A Woman Be More Like A Man?'" Women Writers and the Early Modern British Political Tradition, Ed. Hilda L. Smith. Cambridge: Cambridge UP, 1998. 220-42.
- Schwoerer, Lois G. "Women's public political voice in England: 1640-1740." Women Writers and the Early Modern Political Tradition. Eds. Hilda L. Smith and Carole Pateman. Cambridge: Cambridge UP, 1998. 56-74.
- Shanley, Mary Lyndon. "Marriage Contract and Social Contract in Seventeenth Century Political Thought." The Western Political Quarterly XXXII.1 (March 1975): 75-91.

Sharpe, J. A. Crime in Early Modern England, 1550-1750.
London: Longman, 1984.

---. Defamation and Sexual Slander in Early Modern England:
The Church Courts at York. Borthwick papers no. 58.
York, 1980.

----- "Domestic Homicide in Early Modern England." The
Historical Journal 24.1 (1981): 29-48.

-----. "'Last Dying Speeches': Religion, Ideology and
Public Execution in Seventeenth-Century England." Past &
Present 107 (May 1985): 144-67.

Shawcross, John T. "Milton and Covenant: the Christian View
of Old Testament Theology." Milton and Scriptural
Tradition: The Bible Into Poetry. Eds. James H. Sims and
Leland Ryken. Columbia: U of Missouri P, 1984. 160-91.

---. "Two Comments." Milton Quarterly 7.4 (1973):97-8.

Shohet, Lauren. "Figuring Chastity: Milton's Ludlow
Masque." Menacing Virgins: Representing Virginity in the
Middle Ages and Renaissance. Newark: U of Delaware P,
1999. 146-64.

Sims, James H. and Leland Ryken. Milton and Scriptural
Tradition. Columbia: U of Missouri P, 1984.

Skulsky, Harold. Justice in the Dock: Milton's
Experimental Tragedy. Newark: U of Delaware P, 1995.

Slater, Gilbert. The English Peasantry and the Enclosure
of the Common Fields. London: Archibald Constable &
Co., 1907.

Sokol, B. J. and Mary Sokol. Shakespeare's Legal Language:
A Dictionary. London: Athlone P, 2000.

Spring, Eileen. "The Heiress-at-Law: English Real Property
Law from a new point of view." Law And History Review 8
(1990): 273-96.

-----. Law, Land and Family: Aristocratic Inheritance in England, 1300-1800. Chapel Hill, N. C.: U of North Carolina P, 1993.

Stallybrass, Peter. "Patriarchal Territories: The Body Enclosed." Rewriting the Renaissance: The Discourses of Sexual Difference in Early Modern Europe. Eds. Margaret W. Ferguson, Maureen Quilligan and Nancy J. Vickers. Chicago: U of Chicago P, 1986. 123-42.

---. "The World Turned Upside Down: Inversion, Gender and the State." The Matter of Difference: Materialist Feminist Criticism of Shakespeare. Ed. Valerie Wayne Ithaca: Cornell UP, 1991. 201-20.

Staves, Susan. Married Women's Separate Property in England 1660-1833. Cambridge: Harvard UP, 1990.

---. Players' Scepters: Fictions of Authority in the Restoration. Lincoln: U of Nebraska P, 1979.

St. George, Robert. "'Heated' Speech and Literacy in Seventeenth-Century New England." Seventeenth-Century New England. Eds. David D. Hall and David Gryson Allen. Charlottesville: UP of Virginia, 1984.

Stewart, Stanley. The Enclosed Garden: The Tradition and the Image in Seventeenth-Century Poetry. Madison: U of Wisconsin P, 1966.

Stretton, Tim. Women Waging Law in Elizabethan England. Cambridge: Cambridge UP, 1998.

Sullivan, Jr., Garrett A. The Drama of Landscape: Land, Property, and Social Relations on the Early Modern Stage. Stanford: Stanford UP, 1998.

Taub, Nadine and Schneider, Elizabeth M. "Women's Subordination and the Rule of Law." Feminist Legal Theory: Foundations. Ed. D. Kelly Weisberg. Philadelphia: Temple UP, 1993. 9-21.

- Thirsk, Joan, ed. The Agrarian History of England and Wales, vol. V.ii, 1640-1750. Cambridge: Cambridge UP, 1985.
- Thomas, K. Keith Thomas, Religion and the Decline of Magic. New York: Charles Scribners' Sons, 1971.
- . "Women and the Civil War Sects." Past & Present 13 (1958): 42-62.
- Thompson, E. P. Whigs and Hunters: The Origin of the Black Act. New York: Pantheon Books, 1975.
- Tillyard, E. M. W. "The Action of Comus." "A Maske at Ludlow": Essays on Milton's Comus. Ed. John Diekhoff. Cleveland: Case Western UP, 1968. 43-57.
- Travitsky, Betty S. "Husband-Murder and Petty Treason in English Renaissance Tragedy." Renaissance Drama 21 (1990): 171-98.
- . Subordination and Authorship in Early Modern England: The Case of Elizabeth Cavendish Egerton and Her "Loose Papers". Tempe, Az: Arizona Center for Medieval and Renaissance Studies, 1999.
- Tuck, Richard. Natural Rights Theories: Their Origin and Development. Cambridge: Cambridge UP, 1979.
- Turner, James. One Flesh: Paradisal Marriage and Sexual Relations in the Age of Milton. Oxford: Clarendon, 1987.
- Turner, Michael Edward. English Parliamentary Enclosure: its Historical Geography and Economic History. Dawson: Archon Books, 1980.
- Underdown, David E. "The Taming of the Scold: Enforcement of Patriarchal Authority in Early Modern England." Order and Disorder in Early Modern England. Eds. Anthony Fletcher and John Stevenson. Cambridge: Cambridge UP, 1985. 116-36.

- . Rebel, Riot, and Rebellion: Popular Politics and Culture 1603-1660. Oxford: Oxford UP, 1987.
- Van Kluyve, Robert A. "'Out, Out Hyaena!'" American Notes & Queries I (March 1963): 99-101.
- Veall, Donald. The Popular Movement for Law Reform 1640-60. Oxford: Clarendon, 1970.
- Von Den Steinen, Karl. "The Discovery of Women in Eighteenth-Century English Political Life." The Women of England From Anglo-Saxon Times to the Present: Interpretive Bibliographical Essays. Ed. Barbara Kanner. Hamden, CT.: Archon Books, 1979. 229-58.
- Wall, Kathleen. "A Mask Presented at Ludlow Castle: The Armor of Logos." Milton and the Idea of Woman. Ed. Julia M. Walker. Urbana: U of Illinois P, 1988. 52-65.
- Ward, Ian. Shakespeare and the Legal Imagination. London: Butterworths, 1999.
- Webber, Joan. "The Politics of Poetry: Feminism and Paradise Lost." Milton Studies XIV (1980): 3-24.
- Weisberg, David. "Rule, Self, Subject: The Problem of Power in Paradise Lost." in Milton Studies XXX (1993): 85-107.
- Weisberg, Richard H. Poethics and Other Strategies of Law and Literature. New York: Columbia UP, 1992.
- West, Robin. "Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Vision of Franz Kafka and Richard Posner." Harvard Law Review 99 (1985): 384-427.
- White, Edward J. Commentaries on the law in Shakespeare, with explanations of the legal terms used in the plays, poems and sonnets, and a consideration of the criminal types presented. St. Louis, MO, 1913.

- Wilding, Michael. "Regaining the Radical Milton." The Radical Reader. Eds. Stephen Knight and Michael Wilding. Sydney, Australia: Wild & Woolley, 1977. 119-43.
- Willen, Diane. "Women in the Public Sphere in Early Modern England: The Case of the Urban Working Poor." Sixteenth Century Journal 19. 4 (1988).
- Williams, Raymond. The Country and the City. Oxford: Oxford UP, 1973.
- Wittreich, Joseph A. "'He Ever Was A Dissenter': Milton's Transgressive Maneuvers in Paradise Lost." Arenas of Conflict: Milton and the Unfettered Mind. Eds. Kristin A. Pruitt and Charles W. Durham. Selinsgrove: Susquehanna UP, 1997. 21-40.
- . "'Inspir'd with Contradiction': Mapping Gender Discourses in Paradise Lost." Literary Milton: Text, Pretext, Context. Eds. Diana Trevino Benet and Michael Lieb. Pittsburgh: Duquesne UP, 1994. 133-60.
- . Interpreting Samson Agonistes. Princeton: Princeton UP, 1986.
- . "'John, John, I blush for thee!' Mapping Gender Discourses in Paradise Lost." Out of Bounds: Male Writers and Gender(ed) Criticism. Eds. Laura Claridge and Elizabeth Langland. Amherst: U of Massachusetts P, 1990. 22-54.
- Woods, Susanne. "How Free Are Milton's Women?" Milton and the Idea of Woman. Ed. Julia M. Walker. Urbana: U of Illinois P, 1988. 15-31.
- Woodhouse, A. S. P. "The Argument of Comus." U of Toronto Quarterly 11:1 (October 1941): 46-71.
- Yelling, J. A. Common Field and Enclosure in England 1450-1850. Hambden: Archon Books, 1977.

Zaret, David. The Heavenly Contract: Ideology and Organization in Pre-Revolutionary Puritanism. Chicago: The U of Chicago P, 1985.

Zomchick, John P. "'A Penetration which Nothing Can Deceive': Gender and Juridical Discourse in Some Eighteenth-Century Narratives." Studies in English Literature 29.3 (Summer 1989): 535-61.