

Moll Flanders and English Marriage Law

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Halfway through *Moll Flanders*, Daniel Defoe's eponymous heroine receives a marriage proposal from a bank clerk. A cuckold, the clerk has won a decree of separation from his wife and now seeks to make good on his promise to marry Moll. Moll, however, raises "some Scruples at the Lawfulness of his Marrying again" and advises her friend to "consider very seriously upon [this] Point before he resolv'[s] on it."¹ Moll's objection, of course, is richly ironic, as Moll herself is already married. Her husband, the Linnen-Draper, has long since left her, but she remains his lawful wife. Keenly aware of the restrictive nature of English marriage law, Moll has capitalized upon the clerk's own conjugal trouble. She has advised the clerk to turn to the courts—knowing that he could obtain only a separation from his wife, rather than a full divorce enabling him to remarry—because she wished to delay their match. Now that the clerk has obtained the decree, Moll objects to his proposal because she is pregnant and needs to put him off a little longer. In Moll's words, in her dealings with her banker friend, she "Plays the Hypocrite" (195).

Moll's scruples, however, turn out to be more than a matter of convenience. At many moments in the narrative, Moll anxiously muses on her illicit sexual behaviour, invoking the legal prohibition on her remarriage immediately after she contests it. She highlights the fact that the law continues to view her as a wife long after her husband has deserted her, attempting to persuade her readers that this legal category does not adequately define her identity. Indeed, she sprinkles her narrative with repeated reminders of her plight. Published in a society

1 Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders*, ed. David Blewett (1722; reprint, New York: Penguin, 1989), 230. References are to this edition.

where the laws made it very easy to form unions and yet made it impossible to dissolve them, *Moll Flanders* enters into important debates about the legal rules structuring intimate sexual and emotional life.

Scholars have carefully examined the novel's treatment of the institution of marriage, but they have devoted less attention to the legal issues raised by Moll's many matches.² Maximillian E. Novak's *Defoe and the Nature of Man* is a crucial starting point for an analysis of Defoe's ideas about English marriage law. Focusing on the influence of natural law thought on Defoe's fiction, Novak notes the ways in which Moll defies the legal restriction on her remarriage and follows, instead, the demands of nature and reason. He suggests that Defoe agrees with the idea articulated by natural law philosophers that desertion dissolves a marriage contract and justifies a deserted spouse's remarriage.³ Shirlene Mason, by contrast, reaches a different conclusion about Defoe's position on this question. In *Daniel Defoe and the Status of Women*, she suggests that Defoe is critical of Moll's decision to ignore the legal restriction on her remarriage. In Mason's view, Defoe disapproves of divorce and does not wish to see the grounds for divorce expanded.⁴

Novak is convincing when he suggests that Defoe endorses some of

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- 2 For discussions of marriage, see David Blewett, "Changing Attitudes toward Marriage in the Time of Defoe: The Case of Moll Flanders," *Huntington Library Quarterly* 44 (1981), 77–88; Lois A. Chaber, "Matriarchal Mirror: Women and Capital in *Moll Flanders*," *PMLA* 97 (1982), 212–26; Ellen Pollak, "Moll Flanders, Incest, and the Structure of Exchange," *The Eighteenth Century: Theory and Interpretation* 30 (1989), 3–21; John Richetti, "The Family, Sex, and Marriage in Defoe's *Moll Flanders* and *Roxana*," *Studies in the Literary Imagination* 15 (1982), 19–35. On the importance of female relationships as an alternative to unstable marriages, see Srividhya Swaminathan, "Defoe's Alternative Conduct Manual: Survival Strategies and Female Networks in *Moll Flanders*," *Eighteenth-Century Fiction* 15 (2003), 185–206. John P. Zomchick examines gender roles and female sexuality in *Molls Flanders* and contemporary trial narratives, but he does not discuss the novel's treatment of English marriage law. Zomchick, "'A Penetration Which Nothing Can Deceive': Gender and Juridical Discourse in Some Eighteenth-Century Narratives," *SEL: Studies in English Literature 1500–1900* 29 (1989), 547–52. Scholars interested in legal aspects of the novel have generally focused on Defoe's treatment of crime and the novel's relationship to criminal biography. See John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987), 43–51; Lincoln Faller, *Crime and Defoe: A New Kind of Writing* (Cambridge: Cambridge University Press, 1993); John Rietz, "Criminal Ms-Representation: *Moll Flanders* and Female Criminal Biography," *Studies in the Novel* 23 (1991), 183–95; Beth Swan, "Moll Flanders: The Felon as Lawyer," *Eighteenth-Century Fiction* 11 (1998), 33–48.
 - 3 Maximillian E. Novak, *Defoe and the Nature of Man* (New York: Oxford University Press, 1963), 101–6. Citing Novak's work, Chaber asserts that Defoe approves of "de facto divorce" for deserted wives. She explains in a footnote that Novak "remains convincing in relating Defoe's sympathetic view of divorce to natural law philosophy" (218, 225n25).
 - 4 Shirlene Mason, *Daniel Defoe and the Status of Women* (Montreal: Eden Press, 1978), 77–78.

Moll's attempts to subvert the prohibition on her remarriage, but his analysis of the reason *why* Defoe endorses her behaviour is less persuasive. Defoe's treatment of the implications of the Linnen-Draper's desertion warrants further attention. In addition, the novel raises important questions about the role of consent in the making and breaking of the conjugal tie—questions that Novak does not address. In this article, I build upon but revise Novak's analysis as I flesh out Defoe's ideas about the formation of marriage and the justifications for divorce in early modern England. In *Moll Flanders*, Defoe implicitly suggests that English canon law needs revision in two respects. First, Defoe criticizes the canon law practice of recognizing the exchange of unsolemnized and unwitnessed vows, and highlights the need for the law to require the celebration of conjugal vows in formal, public ceremonies. Second, Defoe criticizes the canon law rule that absolutely prohibits a deserted wife from remarrying. He disagrees with the radical position in the divorce debates—the idea that consent dissolves a marriage contract—as well as with the idea articulated by natural law philosophers that desertion itself justifies divorce. He suggests, instead, that the lengthy absence of Moll's husband justifies her subsequent marriage to Jemy Cole, and that the canon law ought to recognize their union as valid.



To understand the legal rhetoric that runs through Defoe's novel, we need to turn to the contentious debates about marriage law that swirled through early modern England. Jurists fostered confusion and uncertainty in sexual relations by developing a set of complicated rules that governed the formation of the marriage contract.⁵ The ecclesiastical courts, which decided all matters concerning matrimonial relations, held that a couple could form a "contract marriage" by exchanging unconditional marriage vows in the present tense—spousals *de præsenti*.⁶ As Henry Swinburne explained in *A Treatise of Spousals, or Matrimonial Contracts*:

Whiles the Parties do promise only, that they will take, or will marry; they do not thereby presently take or marry: But deferring the accomplishment of that promise, until another time, the Knot in the mean time is not so surely tied, but

5 Lawrence Stone, *Road to Divorce: A History of the Making and Breaking of Marriage in England, 1530–1987* (New York: Oxford University Press, 1995), 68–76.

6 Stone, 53.

that it may be loosed, whiles the matter is in suspense and unperfect. But that woman, and that man, which have contracted Spousals *de præsenti*; as [*I do take thee to my Wife*] and [*I do take thee to my Husband*] cannot by any Agreement dissolve those Spousals, but are reputed for very Husband and Wife in respect of the Substance, and indissoluble Knot of Matrimony.⁷

In canon law, a properly proven contract (or “pre-contract,” as it was also called) nullified all subsequent unions—even marriages formalized in church.⁸

The common law courts, by contrast, refused to recognize contract marriages. To be recognized as valid by these courts, which decided matters relating to property, and thus to bring women dower and inheritance rights, marriages needed to be publicized by the calling of banns and solemnized in open church. Whereas the propertied laity generally held formal, public marriage ceremonies, members of the lower classes tended to rely upon a free courtship culminating in spousals, sometimes carried out without the consent of parents and without witnesses. Few of these people were aware of the conflict between the canon law and the common law regarding the validity of contract marriages, but some were so poor that questions of property did not concern them.⁹

Contract marriages had another drawback, however. The canon law courts required strong proof before they recognized unsolemnized unions. If both parties agreed that they had formed an unconditional contract, the courts ruled that their word was to be believed. They held, though, that “faith in the way of marriage pledged secretly and without witnesses, betwixt man and woman, be of no effect if either party do deny it.”¹⁰ Not surprisingly, lovers sometimes disagreed about the precise words that they had exchanged in private. Secret marriages appeared frequently in Restoration comedies, but offstage they were rarely the occasion for laughter.¹¹ These matches created

7 Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts* (London: S. Roycroft for R. Clavell, 1686; written c. 1600 (see figure 1); reprint, New York: Garland Publishing, 1985), 13. For a discussion of contract marriages in early modern England, see also Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (New York: Cambridge University Press, 1987), 189–90.

8 Stone, 53; Swinburne, 13.

9 Stone, 57, 69.

10 Stone, 72.

11 For a discussion of the pervasive appearance of contract marriages as well as of tricked and mock marriages in Restoration comedy, see Gellert Spencer Alleman, *Matrimonial Law and the Materials of Restoration Comedy* (Philadelphia: University of Pennsylvania Press, 1942), 5–25, 60–80.

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Figure 1. Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts* (London: S. Roycroft for R. Clavell, 1686), written c. 1600. Reproduced courtesy of the Rare Book Room, Lillian Goldman Library, Yale Law School.

much litigation in the canon law courts. Most of the cases were brought by women, many of whom were pregnant, alleging that their lovers had backed out of binding contracts; less frequently, the plaintiffs were men. Although the number of suits involving these marriages decreased in the first few decades of the seventeenth century, the church courts witnessed a revival of this type of litigation in the 1660s as a result of their relaxed control over sexual relations during the Civil War and the Interregnum and the consequent increase in the number of secret contracts.¹² The courts attempted to discourage people from forming these unions by requiring strong evidence—including the testimony of two plausible witnesses—to establish their validity.¹³ Still, men continued to deceive unsuspecting women by entering into contracts that they intended never to acknowledge, prompting Defoe's contemporary Thomas Salmon to observe in *A Critical Essay Concerning Marriage* (1724), "what is so common, what more boasted of than the falsifying our Vows of this Kind, and deluding innocent Virgins, by the most solemn Oaths and Imprecations?"¹⁴ Contract marriages would continue to provoke controversy until Parliament abolished them in Lord Hardwicke's Marriage Act of 1753.¹⁵

Where individuals could turn to the courts to resolve disputes about the existence of valid unions, unhappy couples seeking to dissolve their vows could not expect any relief from these tribunals. Unlike almost every other Protestant nation in Europe at the beginning of the seventeenth century, England retained the medieval Catholic ban on divorce.¹⁶ Adopting the Catholic interpretation of the scriptures, English church courts held that the bonds of matrimony were indissoluble during the lives of the parties. The courts issued two types of "divorce" decrees, but neither decree dissolved a valid union. A

12 Stone, 71, 79. Church courts ceased to function in the early 1640s and, in 1646, church control over marriage was abolished. The courts began operating again in 1660. See also 308.

13 See Stone, 69, 77–78. The number of suits involving contract marriages drastically decreased between 1680 and 1733 because of the hostile attitudes of the courts. See also 79.

14 Thomas Salmon, dedication, *A Critical Essay Concerning Marriage* (London: Charles Rivington, 1724; reprint, New York: Garland Publishing, 1985), 14.

15 For a summary of the debates surrounding the passage of Lord Hardwicke's Marriage Act, see R.B. Outhwaite, *Clandestine Marriage in England, 1500–1850* (London: Hambledon Press, 1995), 75–122.

16 Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (New York: Cambridge University Press, 1988), 95.

couple could obtain a divorce conferring upon them the right to remarry—*divortium a vinculo matrimonii*—if they could show that their marriage had been void from the beginning because of a lack of a capacity to marry or a lack of true consent. Alternatively, a couple could seek a limited divorce—*divortium a mensa et thoro*—if one spouse could show that the other had committed adultery or had engaged in behaviour so cruel that it threatened the other's life. Such a separation "from bed and board," however, simply licensed the couple to live apart; it did not dissolve their union and, thus, did not permit them to remarry.¹⁷

These restrictive rules provoked much controversy in seventeenth- and eighteenth-century England. The circumstances under which a couple might dissolve a marriage contract became the subject of great debate—a topic of discussion for clerics, jurists, political philosophers, novelists, and dramatists alike. John Milton and John Locke articulated the radical position in the divorce debates. They argued that, in certain circumstances, a couple's consent was sufficient to dissolve the marriage tie. Other thinkers, by contrast, maintained that the courts ought to recognize certain behaviour—such as adultery, cruelty, wilful desertion, and wilful desertion followed by an absence lasting a period of years—as legitimate grounds for a full divorce.¹⁸

These varied arguments, grounded alternatively in scripture and natural law, met with strong resistance from those who viewed

17 See *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives*, 2nd ed. (London: Eliz. Nutt, and R. Bolling for John Walthor, 1719), 372–82; J.H. Baker, *An Introduction to English Legal History*, 3rd ed. (London: Butterworths, 1990), 559–62. Two other forms of separation also emerged in seventeenth-century England. In the 1650s, in response to the administrative chaos of the Interregnum, spouses began relying upon private separation agreements. These agreements were negotiated between the two spouses and embodied in a deed of separation drawn up by a conveyancer. Beginning in 1670, moreover, wealthy men whose wives committed adultery began successfully petitioning Parliament for private acts dissolving their unions and granting them permission to remarry. See Stone, 149–50, 309–22.

18 Reformers distinguished "wilful" or voluntary desertion from involuntary desertion, which referred to departures occasioned by imprisonment or transportation. For discussions of arguments in favour of divorce in the seventeenth and eighteenth centuries, see Phillips, 111–16, 212–14; Stone, 347–50; and Arthur Robert Winnett, *Divorce and Remarriage in Anglicanism* (New York: St Martin's Press, 1958), 79–117. On representations of divorce in late seventeenth-century and early eighteenth-century drama, see Paula Backscheider, "Endless Aversion Rooted in the Soul": Divorce in the 1690–1730 Theater," *The Eighteenth Century: Theory and Interpretation* 37 (1996), 99–135; and Alleman, 107–41.

marriage as a sacred and indissoluble bond.¹⁹ The church courts would, in fact, retain the ban on divorce until 1857, and another century passed before Parliament would permit couples to dissolve their unions simply because they could not live together as true companions.²⁰ The arguments that swirled through early modern England, though, laid the groundwork for the future reforms. The debates about divorce as well as the controversy surrounding contract marriages mark an important moment in the history of marriage in England—a moment when a diverse group of thinkers began to reflect upon the law's role in intimate sexual and emotional life. The possibilities and the limits of English marriage law became a subject of concern not only for political thinkers and jurists but also for imaginative writers such as Defoe.



Defoe's heroine finds herself caught up in her own debate about English marriage law early on in *Moll Flanders*. Moll promptly falls in love with her employer's oldest son, who showers her with gold coins, compliments, and caresses, promising to marry her when he inherits his father's estate. Until then, he assures her, he will support her and will never abandon her. In fact, he soon tells her to look upon herself *as* his wife, explaining that they need no ceremony to consecrate their union. When his younger brother, Robin, asks for Moll's hand in marriage, however, he advises her to accept the offer. Shocked and angry, Moll turns his arguments back on himself: "I *told him*, he knew very well ... that my Consent was at the same time Engag'd to him; that he had all along told me I was his Wife, and I look'd upon my self as effectually so, as if the Ceremony had pass'd; and that it was from his own Mouth that I did so, he having all along persuaded me to call myself his Wife" (75). Invoking his words again, Moll implores him:

19 For discussions of arguments against divorce, see Phillips, 108–10; Stone, 350–53; Winnett, 60–78.

20 The Matrimonial Causes Act of 1857 transferred jurisdiction over divorce from the church courts to a newly established secular Divorce Court. Under this Act, a husband could obtain a full divorce if he showed that his wife had committed adultery, but a wife could obtain a full divorce only if she provided evidence of an "aggravating factor," such as incest, bigamy, cruelty, or desertion for two years, in addition to her husband's adultery. See Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England* (Princeton: Princeton University Press, 1989), 39–43; and Stone, 368–82. Parliament abandoned the principle of matrimonial fault in 1969. See Stone, 406–9.

I desire you to remember the long Discourses you have had with me, and the many Hours pains you have taken to perswade me to believe myself an honest Woman; that I was your Wife intentionally, tho' not in the Eye of the World, and that it was as effectual a Marriage that had pass'd between us as if we had been publicly Wedded by the Parson of the Parish; you know and cannot but remember, that these have been your own Words to me. (80)

The older brother's statements, as Moll summarizes them here, reflect an accurate knowledge of seventeenth-century English marriage law. As we have seen, a couple could form a contract marriage by exchanging unconditional vows in the present tense.

Moll loses her argument with the older brother, however, because he refuses to acknowledge that they have exchanged such vows. At first, he attempts to reassure her of his constancy without explicitly admitting or denying that they are wed. "Well, my Dear," he tells her, "don't be concern'd at that now, if I am not your Husband, I'll be as good as a Husband to you" (75). When Moll next threatens to tell Robin "that [she is] Married already to his elder Brother," the latter admits that Moll's statement "may be true in some Sense," but he insists that it would not be "Convenient on many Accounts" for her to give "such an Answer as that" (77). Thereafter, he simply reminds her of his initial, conditional vow. "I have not broken one Promise with you yet," he tells her. "I did tell you I would Marry you when I was come to my Estate, but you see My Father is a hail healthy Man, and may live these thirty Years still, and not be Older than several are round us in the Town; and you never propos'd my Marrying you sooner because you know it might be my Ruin" (79).

This experience serves as a rude introduction to the fluid, unstable world of lower-class courtship in early modern England. Through Moll's experience, Defoe articulates a critique of contract marriages—a critique that he would develop explicitly in *Conjugal Lewdness; A Treatise Concerning the Use and Abuse of the Marriage Bed* (1727).²¹ Anticipating arguments made by reformers in the middle of the century, he shows that the free and voluntary exchange of vows in-

21 In *Conjugal Lewdness*, Defoe recoils at the thought of men and women engaging in sexual relations before they have exchanged vows in formal, public ceremonies. "All this is wrong—'tis all vile and abominable," Defoe exclaims. "'Tis not only whoring, but 'tis worse than whoring; or, if you please, the worst kind of whoring, and that many ways." He enumerates a host of objections to this practice, pointing out that it is highly imprudent for a woman to risk everything "on a bare verbal promise," which the man will likely break. Defoe, *Conjugal Lewdness; A Treatise Concerning the Use and Abuse of the Marriage Bed* (London, 1727), 74, in *The Works of Daniel De Foe, with a Memoir of his Life and Writings*, ed. William Hazlitt, vol. 3 (London: John Clements, 1843).

vites manipulation by the more powerful party and creates confusion as to the existence of a binding contract. As we have seen, the church courts had themselves grown increasingly hostile towards contract marriages by the time Defoe published his novel: they sought to discourage such privately contracted unions, and they recognized fewer and fewer of them in spite of the official canon law rule in their favour. Defoe implicitly agrees with this hostility towards contract marriages, suggesting that the canon law ought to require all marriages to be formally and publicly celebrated.²² Defoe conveys the fleeting nature of the older brother's vows through Moll's complicated (and confusing) narration. Moll does not recount the conversations in which she and the older brother exchange vows; rather, she relates her attempts to persuade him to acknowledge his vows—relates her own summary of his words—thus burying his actual language in the unrecoverable past. We receive only glimpses of the brother's conflicting statements and equivocal denials. Moll's halting and choppy narration reflects the uncertainty surrounding her identity, as the older brother transforms her from his mistress to his wife and back again. At the same time that Defoe criticizes Moll for engaging in sexual relations with a man who refuses to make her "fair, and honourable Proposals of Marriage" (64), he implicitly criticizes the older brother for taking advantage of his more powerful position to wriggle out of his union with Moll.

The rules governing contract marriages quite literally enter Moll's and the older brother's thoughts during moments of extraordinary intimacy. Moll is, admittedly, not worried about losing her virginity before she marries. She confides that, initially, "it seem[s] a Matter of no great Consequence" whether the older brother "intend[s] to Marry [her]," and that she gives herself "up to a readiness of being ruined without the least concern" (64). Yet, she soon realizes that the brother's intentions *do* matter; she comes to care very much about his vows. Moll and the older brother, after all, engage in lengthy discussions about English marriage law. By the time the younger brother, Robin, proposes marriage, she is deeply invested in the idea of being the older brother's wife; however, she can do nothing to prevent the older brother from slipping out of their union.

22 Novak notes the complexity and the confusion of Moll's exchange with the older brother, but he does not comment on the ways in which the exchange raises questions about the morality of contract marriages. Novak suggests that when Moll attempts to persuade the older brother that they are already legally married, she alludes to the canon law rule that a conditional marriage becomes a real marriage when the parties engage in sexual intercourse (100).

Defoe suggests that some of the uncertainty surrounding courtship would be alleviated if couples were unable to form contract marriages; a woman would know at precisely what point she became a wife. Husbands, moreover, would not be able unilaterally to dissolve their marriages by refusing to recognize their private vows. While Defoe implicitly criticizes Moll for engaging in sexual relations with the older brother before she is publicly married, he shows that the underlying problem is the law's recognition of unsolemnized and unwitnessed vows.



Not only does *Moll Flanders* intervene in the controversy over contract marriages, but it also enters into the debates about divorce that swirled through early modern England. The novel devotes particular attention to the idea that a couple could agree to dissolve their own union. Milton articulated this idea in four treatises published in the mid-seventeenth century. Relying on scripture, he argued that the essence of marriage was companionship and that a couple could dissolve their union if they found it impossible to live together as true companions. In his view, "indisposition, unfitness, or contrariety of mind, arising from a cause in nature unchangable, hindring and ever likely to hinder the main benefits of conjugall society, which are solace and peace, [was] a greater reason of divorce then naturall frigidity, especially if there [were] no children, and ... there [was] mutuall consent."²³ As scholars have long noted, Milton assumed the perspective of the wronged husband throughout his treatises. The husband's grievances, as opposed to the wife's, aroused his compassion.²⁴ Looking back to the ancient practice of self-divorce, Milton insisted that unhappy couples ought to dissolve their unions through private bills of divorce, rather than seek redress in public courts of justice. In Milton's view, the husband was to have the final word in these pro-

23 John Milton, *The Doctrine and Discipline of Divorce* (London, 1644) (see figure 2), in *Complete Prose Works of John Milton*, ed. Don Wolfe (New Haven: Yale University Press, 1953), 2:242. After he published *The Doctrine and Discipline of Divorce*, Milton developed his ideas about divorce in three further treatises: *The Judgment of Martin Bucer* (1644), *Tetrachordon* (1645), and *Colasterion* (1645).

24 See George Elliott Howard, *A History of Matrimonial Institutions* (Chicago: University of Chicago Press, 1904), 2:88–92; Phillips, 122–25; Olga Lucía Valbuena, "Milton's 'Divorsive' Interpretation and the Gendered Reader," *Milton Studies* 27 (1992), 115–38. For an argument that, in Milton's view, the right of divorce extended to women as well as to men, see Matthew Biberman, "Milton, Marriage, and a Woman's Right to Divorce," *SEL: Studies in English Literature 1500–1900* 39 (1999), 131–53.

ceedings. Milton conceded that disputes over “dowries, jointures, and the like, besides the punishing of adultery” ought to be referred to a magistrate, but he insisted that “the absolute and final hindring of divorce cannot belong to any civil or earthly power, against the will and consent of both parties, or of the husband alone.”²⁵ In Milton’s reasoning, a wife would not be injured if she did not consent to her divorce. In such a case, Milton explained, the divorce would be “either just, and so deserv’d; or if unjust, such in all likelihood was the divorcer, and to part from an unjust man is happinesse, and no injury to be lamented.”²⁶ Although Milton suggested that mutual consent was important to the dissolution of a marriage contract, it was not necessary, in his view, that both parties agreed to the divorce.

Milton’s argument for consensual divorce was extremely controversial, but his ideas found favour with a few Puritans and Dissenters in the seventeenth century, and they continued to attract a limited number of adherents in Defoe’s day.²⁷ As one disgruntled husband explained in Defoe’s own *Applebee’s Journal*:

Mr. *Milton’s* Arguments go a great way with me; for, in short, if my wife and I,—by mere agreeing upon Terms,—came together and married,—why may not my wife and I,—by the like mere agreeing upon Terms,—separate again? For if mutual Consent be the Essence of the Contract of Matrimony, why should not the dissolving that mutual Consent dissolve likewise the Marriage and disengage the Parties from one another again?²⁸

Thomas Salmon invoked this argument, too, in *A Critical Essay Concerning Marriage*, devoting nearly thirty pages of his treatise to Milton’s ideas.²⁹

25 Milton, *The Doctrine and Discipline of Divorce*, 2:344.

26 Milton, *The Doctrine and Discipline of Divorce*, 2:349.

27 See Stone, 348–49; Phillips, 128–29.

28 *Applebee’s Journal*, 24 April 1725, cited in Novak, 104.

29 Salmon, 123–62. Unlike Milton, however, Salmon suggested that an unhappy couple ought to turn to the courts for relief, rather than privately agree to dissolve their own marriage. He argued that the courts ought to grant divorces when both parties consented to the dissolution of their union.

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Figure 2. John Milton, *The Doctrine and Discipline of Divorce* (London, 1644). Reproduced courtesy of the Beinecke Rare Book and Manuscript Library, Yale University.

Defoe, however, strongly disagrees with Milton's argument for consensual divorce. In *Conjugal Lewdness*, he highlights this disagreement. Defoe insists that men and women must marry for love, but he refuses to sanction divorce as a solution for the husband and the wife who find themselves unhappily wed. He explains:

I will not follow Mr. Milton, and carry it up to this, that [a marriage] may be dissolved again upon that single account: no, no; I shall open no doors to the vitiated wishes of the times, where men would have marriage be a stated contract; where, as the parties' agreement made the bargain, so the same mutual agreement might dissolve it; where, as insincere love joined them, a sincere and perfect hatred should part them again. This would fill the world with confusion ... would make marriage a stale, a convenience, to gratify the sensual part, and to be made use of as a thing not to be named.³⁰

Defoe here recoils at the idea of treating marriage as a contract dissoluble at the will of the parties. Much as he suggests that individuals ought not to be able to form a marriage simply by exchanging consent, he suggests that they ought not to be able to dissolve a union by exchanging consent.

Defoe probes the implications of consensual divorce much more fully in *Moll Flanders* than he does in *Conjugal Lewdness*. We might, indeed, think of the novel as an extended reply to Milton.³¹ In the world of *Moll Flanders*, couples dissolve their vows even though they

30 Defoe, *Conjugal Lewdness*, 35.

31 John Locke took the implications of the contractual view of marriage even further than Milton did. Relying on natural law theory, Locke argued that a husband and a wife could agree to dissolve their union for any reason, as long as they waited until they had fulfilled the ends of the contract—that is, until they had finished bearing and raising children. “It would give one reason to enquire,” he wrote in *The Second Treatise of Government* (1690), “why this *Compact*, where Procreation and Education are secured, and Inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain Conditions, as well as any other voluntary Compacts, there being no necessity in the nature of the thing, nor to the ends of it, that it should always be for Life.” John Locke, *The Second Treatise of Government*, in *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988), section 81. I focus here on Defoe's engagement with Milton's ideas, rather than Locke's, because we have specific evidence that Defoe read and thought about Milton's position in the divorce debates and because Milton articulated his ideas about divorce more fully and influentially than Locke. For a discussion of Locke's ideas about divorce and their implications for the debate over the nature of authority in familial and political relations, see Mary Shanley, “Marriage Contract and Social Contract in Seventeenth Century English Political Thought,” *Western Political Quarterly* 32 (1979), 87–91. On Locke's relationship to other early modern natural rights theorists, see Phillips, 214.

do *not* hate one another, and husbands end their unions without obtaining their wives' consent. Milton insisted that consensual divorce was justified only "upon extreme necessity,"³² when couples could no longer live together as true companions, but Defoe shows that limiting the circumstances under which couples will dissolve their vows is impossible. Defoe also calls attention to the problems that arise when only one spouse consents to a divorce—problems that Milton overlooks. For where Milton's main concern is the distress of the unhappy husband, Defoe's is the plight of the deserted wife. Defoe's critique of consensual divorce is animated by his concerns about the unequal distribution of power in marriage and the slippery nature of consent.³³

Moll's marriage to the Linnen-Draper provides a telling rebuke to Milton. Foolish and impulsive, the Linnen-Draper squanders his own earnings as well as Moll's savings. A little over two years after their marriage, he is arrested for debt. Before he flees the authorities and runs off to France, he attempts to dissolve his union with Moll. He tells her that she should look upon him as dead and that she "might freely marry again to whom [she] pleas[es]" (180). Defoe makes clear, though, that Moll does not consent to this "divorce." The Linnen-Draper gives her no choice in the matter; she can do nothing to prevent him from leaving her. Moll's husband abandons her to her own fate, belying his vows to support and to sustain her for the duration of her life. In Defoe's view, the ease with which Moll's husband dissolves his marriage is deeply problematic.

Although Moll perceives the difficulties that she experiences as a result of the Linnen-Draper's departure, later on, when it is advantageous to her to do so, she endorses the idea that one spouse might unilaterally terminate a marriage. The gentleman she meets in Bath explains that he has left his wife "under the Conduct of her own Relations" because she is "distemper'd in her Head" (159). Moll applauds the gentleman's decision and, in her mind, she dissolves his

32 Milton, *Colasterion* (1645), in *Complete Works*, 2:723. In *Colasterion*, Milton's fourth divorce treatise, itself a response to a pamphlet denouncing *The Doctrine and Discipline of Divorce*, he insisted that he was not proposing "*Divorce at pleasure*," as some critics suggested. Rather, Milton explained, he was proposing "divorce upon extreme necessity, when through the perversnes, or the apparent unfitness of either, the continuance can bee to both no good at all, but an intollerable injury and temptation to the wronged and the defrauded" (2:723).

33 Although Novak does not discuss in detail Defoe's ideas about consensual divorce, he suggests at one point that Defoe "probably would have agreed that Milton's thesis was perfectly rational when considered from the standpoint of natural law" (104).

union: “he had no Wife, that is to say, she was as no Wife to him” (172). Moll would, in fact, very much like to assume this position herself. As G.A. Starr suggests, however, Defoe criticizes the gentleman for leaving his ailing spouse and endorses the gentleman’s decision eventually to return to her.³⁴ In Defoe’s view, spouses ought not to be able to decide that certain circumstances justify them in leaving their partners and in forming new relationships.

Defoe presents a final example of the problems raised by Milton’s argument in his portrait of Moll’s relationship with Jemy Cole. Jemy attempts to free Moll from the bonds of their own seemingly ill-fated union by declaring it null and void. “Our Marriage is nothing,” he writes her before he runs off. “I shall never be able to see you again: I here discharge you from it; if you can Marry to your Advantage do not decline it on my Account; I here swear to you on my Faith, and on the Word of a Man of Honour, I will never disturb your Repose if I should know of it, which however is not likely” (210). Defoe criticizes Jemy for leaving Moll and for suggesting that he can unilaterally dissolve their marriage. Once again, Moll’s “husband” attempts to end their union without obtaining her consent.³⁵ Jemy’s brief and unexpected note devastates her. “Nothing that ever befel me in my Life sunk so deep into my Heart as this Farwel” (210), she confides. When Jemy returns later that evening, drawn back by compassion and love, she tells him that he “shall go away from [her] no more.” She offers to “go all over the World with [him] rather” (212). Jemy, too, is reluctant to leave Moll. He tells her that it “would be his Destruction” to leave her—and yet, he insists, it “must be” (212). In an attempt to “prevent such a ruinous thing to [them] both, as a final Separation would be” (214), Moll proposes that they move to America, where they could live more economically; Jemy suggests Ireland. In the end, he decides to “try his Fortune that way” and if he succeeds, to send for her. They part “at last, tho’ with the utmost reluctance on [Moll’s] side” (217).

Defoe’s account of Jemy’s leave-taking undermines the argument for consensual divorce. Mother Midnight articulates the Miltonic position. “As you were parted by mutual Consent,” she assures Moll, “the nature of the Contract was destroy’d, and the Obligation was

34 G.A. Starr, *Defoe and Casuistry* (Princeton: Princeton University Press, 1971), 138.

35 Richetti overlooks this pattern when he suggests that Moll practises a “feminist individualism that subverts or at least qualifies the validity or binding finality of marriage” (23). Defoe emphasizes that it is Moll’s *husbands* who pose the underlying threat to the stability and binding finality of marriage through their repeated attempts to dissolve their unions whenever they find it convenient to do so.

mutually discharg'd" (233). Defoe implicitly disagrees with this argument, for it is not at all clear that Moll eventually consents to the dissolution of her union, even though she adapts herself to her situation when she finds herself alone again. Defoe's account of Jemy's and Moll's exchange undercuts Mother Midnight's reasoning and highlights the dangers of permitting a couple to dissolve their own marriage. The slipperiness and manipulability of consent—the ease with which intentions and feelings can be recast and reinterpreted—animate Defoe's critique of consensual divorce, much as they underpin his critique of contract marriages. Here, as in Moll's relationship with the older brother, her reluctance to consent to the dissolution of her union is meaningless; the more powerful party to the marriage effectively decides when it ends.



Although Defoe rejects the argument for consensual divorce, he nonetheless suggests that English marriage law is too restrictive. He implicitly suggests that Moll is justified in remarrying in the lengthy aftermath of her husband's desertion and that the canon law ought to recognize her new union as valid. Statutes in most Protestant countries permitted deserted spouses to remarry at some point, and the idea received support from a few clerics in England.³⁶ Some proponents of this idea argued that desertion itself justified the abandoned spouse's remarriage; others argued that the deserted spouse needed to wait a period of years before she could remarry. Natural law philosophers such as Samuel Pufendorf articulated the first view. Without explicitly endorsing consensual divorce, he maintained that adultery and wilful desertion each violated the marriage contract and thus justified divorce and remarriage.³⁷ Relying upon contract theory, he explained,

the Reason why *Adultery*, and *wilful Desertion*, are accounted sufficient Causes of *Divorce*, doth not arise from any particular Positive Law of God, (as if these two Exceptions were added to that Ordinance which makes the Bond of Marriage perpetual,) but from the common Nature of Covenants, which is such, that when one Party hath broken the Agreement, the other is no longer oblig'd to keep it.³⁸

³⁶ See Phillips, 111; Stone, 347–48.

³⁷ Samuel Pufendorf, *Of the Law of Nature and Nations*, trans. Basil Kennett, 2nd ed. (Oxford: L. Litchfield, 1710), bk. 6, chap. 1, section 21.

³⁸ Pufendorf, bk. 6, chap. 1, section 21. A few Anglican clerics agreed with the idea that wilful desertion itself justified divorce and remarriage. Bishop John Cosin of Durham famously articulated this position in a series of speeches in the House of Lords in 1666

Other thinkers, by contrast, argued that desertion followed by an absence of a period of years, rather than desertion itself, justified divorce and remarriage for the abandoned spouse.³⁹ Some clerics reasoned that the required “waiting period” enabled the deserted partner to attempt a reconciliation with the other spouse.⁴⁰ Others justified the period of absence on the grounds that, if the deserted spouse did not hear from her partner after a number of years, she might then reasonably presume that he was dead. Interestingly, English criminal law implicitly supported this idea: the Bigamy Act of 1603, which made bigamy a felony, carved out an exception for deserted spouses who remarried after their partners had remained absent and silent for at least seven years.⁴¹ The reasoning behind this exception was that, after such a long period of time, the absent spouse might reasonably be presumed dead.⁴² Perhaps even more surprising, the church canons of 1604 carved out a similar exception; they declared bigamy to be a felony, but they mitigated the punishment if the guilty person’s first spouse had remained absent for seven years.⁴³ Even though a deserted spouse would not be subject to prosecution as a felon under the Bigamy Act when she remarried, however, and even though she would not be subject to fines or excommunication from the church, the canon law courts refused to recognize her new union as valid. The deserted spouse, in other words, would not be

during the debates over the Roos divorce bill. Arguing that constancy and cohabitation were the essence of marriage, he insisted that adultery and malicious desertion each broke the marriage contract. See Stone, 347–48; Winnett, 109–17. For excerpts from Cosin’s speeches, see *A Complete Collection of State Trials* (Buffalo: William S. Hein, 2000), 13:1332–38.

39 Phillips, 111–12; Stone, 347.

40 See Phillips, 112.

41 “If any person or persons within his Majesty’s dominions of *England* and *Wales*, being married, or which hereafter shall marry, do at any time after the end of the session of this present parliament, marry any person or persons, the former husband or wife being alive,” the Act provided, “that then every such offence shall be felony, and the person or persons so offending shall suffer death as in cases of felony.” But, it continued: “This act ... shall [not] extend to any person or persons whose husband or wife shall be continuously remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his Majesty’s dominions, the one not knowing the other to be living within that time.” 1 Jac. 1. cap. 11, cited in *The Statutes at Large*, ed. Danby Pickering (Cambridge: Joseph Benthams, 1763), 8:88–89. The Act also exempted from prosecution those who had received either a full or a limited divorce from the ecclesiastical courts. On the Bigamy Act, see Ingram, 171–81, and Stone, 191.

42 Phillips, 298.

43 Phillips, 296.

punished for taking a second husband while her first one was alive because the Bigamy Act—and the canon law, for purposes of defining and punishing bigamy—viewed her first husband as dead. The canon law nonetheless refused to recognize her new union as valid precisely because it continued to view her as a married woman, the wife of her absent spouse. Some clerics called attention to the conflicts between these laws and argued that the canon law ought to recognize the second unions formed in these cases.⁴⁴

Defoe draws upon the reasoning that lay behind the exceptions to the bigamy laws in developing his “case” for Moll’s right to remarry. The Linnen-Draper, we remember, deserts Moll early on in the novel, leaving her tied up in the bonds of matrimony. “I was a Widow bewitched,” she explains of her new, uncertain position. “I had a Husband, and no Husband, and I could not pretend to Marry again, tho’ I knew well enough my Husband would never see *England* any more, if he liv’d fifty Years.” “*Thus I say*,” Moll reiterates, emphasizing the severity of the restriction, “I was limited from Marriage, what Offer soever might be made me” (108). Moll accurately summarizes her precarious position as a deserted wife. In the eyes of the canon law, she remains married to the Linnen-Draper; she cannot obtain a divorce enabling her lawfully to remarry. To her mind, though, she is a “widow,” for she knows that she will never see her husband again. She knows that the Linnen-Draper will no longer provide for her material needs or satisfy her sexual cravings. As Moll memorably puts it, she has a “Husband, and no Husband.” At once invoking and contesting the law’s prohibition on her remarriage, Moll highlights the arbitrary nature of the restriction and questions the law’s ability adequately to define her identity.

Defoe reveals great concern about Moll’s inability ever to enter into a new and binding union in these circumstances. Through the illicit unions that she subsequently forms with her brother, Humphrey, and with Jemy Cole, he examines the implications of the prohibition on her remarriage. Even as Moll alludes to this prohibition, she raises the possibility that she will “pretend to Marry again” (108). This wonderfully ambiguous verb, “pretend,” means, in early modern England, both “to venture” and “to feign.”⁴⁵ Through this second definition, Defoe summons up the spectre of a woman committed to defying and contesting the law. In fact, less than a year after the Linnen-Draper deserts her, Moll assumes the role of a wealthy widow and places

44 Stone, 347.

45 OED, s.v. “Pretend.”

herself back on the marriage market.

Defoe leaves open the question of whether Moll is justified in re-marrying so soon after the Linnen-Draper deserts her. Novak suggests that the novel implicitly supports Pufendorf's argument that desertion itself constitutes divorce and justifies immediate remarriage for the abandoned spouse.⁴⁶ However, he does not examine Moll's marriage to Humphrey—the union that she contracts shortly after the Linnen-Draper's departure. The spectre of Moll's unbreakable bond to the Linnen-Draper looms over her mind after she marries Humphrey. When Moll eventually decides to inform Humphrey of their incestuous relationship, she begins by telling him simply that “he [is not] ... [her] lawful Husband” (142), whereupon Humphrey “turn[s] pale as Death, and [stands] mute as one Thunder struck” (142). “All that run in his Brain,” Moll coyly relates, “was, that I had another Husband alive, which I could not say in fact might not be true; but I assur'd him however, there was not the least of that in it” (142). Moll attempts to dismiss the threat posed by her tie to the Linnen-Draper. “Indeed as to my other Husband,” she explains, “he was effectually dead in Law to me, and had told me I should look on him as such, so I had not the least uneasiness on that score” (142). The Linnen-Draper, though, is not “effectually dead in Law.” Moll kills him off in her thoughts; she—not the law—gives herself the status of “widow.” And she does indeed display “uneasiness on [this] score.” Hence she reminds us of this union even as she contests it. Defoe appears to be uneasy about Moll's tie to the Linnen-Draper, too, although his position regarding Moll's decision to remarry at this point is not entirely clear. He presents her new marriage, of course, in a distinctly unattractive light. Moll becomes repulsed by her union when she discovers that

46 According to Novak, Pufendorf's ideas are evident in Moll's “empirical assumption that desertion constitutes divorce”—an assumption, he suggests, that Defoe endorses (101, 104, 106, 112). Pufendorf does not explicitly assert that desertion itself *constitutes* divorce. He suggests simply that desertion constitutes a violation of the marriage contract and is thus a sufficient *cause* of divorce. He explains that “upon whatever Reasons *Divorces* are tolerated in a Common-wealth, it is highly expedient, that the Cause be heard and approv'd by the proper Magistrate; and that a Point of so very great weight and moment be not left to be decided by the private Conscience and Discretion of the married Pair” (bk. 6, chap. 1, section 22). Pufendorf suggests here that a deserted spouse ought to seek relief from the courts, rather than privately declare the dissolution of her union. Admittedly, Pufendorf also states at one point that “either Person may quit and renounce the Relation, in case the other prove guilty of base Desertion” (section 21). But the ambiguity in Pufendorf's ideas as to divorce procedure aside, his reasoning as to the justification for divorce in this case is clear: drawing upon contract theory, he suggests that desertion itself breaks the marriage contract and justifies immediate remarriage for the deserted spouse.

Humphrey is her brother; cohabiting with him becomes “the most nauseous thing to [her] in the World” (148). Defoe admittedly suggests that this union is objectionable first and foremost because it violates the legal and moral prohibition against incest, not the prohibition against bigamy.⁴⁷ Nor does he establish a clear causal link between the repulsion that Moll experiences in this union and her decision to violate English marriage law. However, if Defoe does not suggest that Moll’s unwitting incest is in some sense a punishment for her decision to remarry, neither does he offer any indication that Moll is justified in forming another union so soon after the Linnen-Draper’s departure.⁴⁸

Defoe, instead, adopts the more conservative position in the debates about desertion. Through Moll’s union with Jemy, he subtly contests the absolute prohibition on her remarriage and suggests that she is justified in remarrying in the lengthy aftermath of her husband’s departure. This prohibition has serious implications for her. Unlike the bank clerk, whose unfaithful wife eventually commits suicide, enabling him to marry again, Moll never obtains proof of her spouse’s demise. The Linnen-Draper’s departure leaves her in limbo. If she knew that he was dead, she could remarry. However, she knows only that he has been absent for many years. Moll repeatedly reminds us of her plight. Looking back on her six-year relationship with the gentleman she meets at Bath, she observes:

I never once reflected that I was all this while a marry’d Woman, a Wife to Mr. —, the Linnen Draper, who tho’ he had left me by the Necessity of his Circumstances, had no power to Discharge me from the Marriage Contract

47 For an insightful discussion of Moll’s violation of the prohibition against incest, see Pollak.

48 In *Roxana* (1724), Defoe offers further indications of his position on this question. In this novel, he puts the natural law argument into the mouth of the immoral servant Amy, who attempts to convince Defoe’s eponymous heroine that she is justified in “marrying” her landlord less than two years after her husband deserts her. Novak insists that “there can be no question that Roxana was entitled to marry her landlord according to the laws of nature,” and he suggests that Defoe approves of their illicit union. See Novak, 102. I would argue, however, that Defoe suggests that desertion itself does *not* justify divorce and remarriage, and that Roxana needs to wait a much longer time before she remarries. Roxana does, in fact, end up seeing her husband again, albeit only briefly and at a distance. When she later learns that Amy has deceived her by telling her that her husband has died, and that he might, in fact, still be alive, Roxana inquires into the matter before she remarries. Defoe, I think, shares Roxana’s feeling that she ought not to enter into a union with the landlord so soon after her husband’s desertion, and he endorses her decision to confirm that her husband is no longer alive before she remarries.

which was between us, or to give me a legal liberty to marry again; so that I had been no less than a Whore and an Adultress all this while. (177)

Notwithstanding Moll's suggestion that when she engaged in adulterous intercourse, she did not worry about the implications of her illicit behaviour, it is clear that, many years later, as she looks back on and recounts her life, she remains deeply troubled by her unbreakable tie to the Linnen-Draper. Only a few pages later, she pauses again to comment upon her position when the gentleman leaves her. This time, she assumes a more defensive tone:

I was now a single Person again, *as I may call my self*, I was loos'd from all the Obligations either of Wedlock or Mistressship in the World; except my Husband the Linnen Draper, who I having not now heard from in almost Fifteen Year, no Body could blame me for thinking my self entirely freed from; seeing also he had at his going away told me, that if I did not hear frequently from him, I should conclude he was dead, and I might freely marry again to whom I pleas'd. (180)

In this passage, Moll at once rejects the legal prohibition on her remarriage and calls attention to it; she dismisses it and yet she remains deeply disturbed by it. Hence, she reminds us of her tie to the Linnen-Draper immediately after she proclaims her freedom "from all the Obligations ... of Wedlock in the World." Through Moll's equivocal language, Defoe conveys the frustration of a woman who wishes that the law would acknowledge the reality of her conjugal life. At this point in the narrative, Moll has not heard from her husband for more than fourteen years, and yet she remains legally bound to him. By more than doubling the length of the Linnen-Draper's absence from the seven years recognized by the Bigamy Act to nearly fifteen, Defoe highlights the unreasonable nature of the canon law's prohibition. For all intents and purposes, Defoe shows, Moll's husband is as good as dead to her. For this reason, he suggests, she is justified in remarriage. The length of the Linnen-Draper's absence is the crucial factor here, rather than the words that the Linnen-Draper speaks to Moll before he leaves her. As we have seen, Defoe implicitly objects to the idea that one spouse may unilaterally terminate a union. He is uncomfortable with the spectre of the Linnen-Draper attempting to release Moll from her vows; he highlights the dangers of permitting a husband to decide when his wife should conclude that he is dead. Moll is justified in remarriage, Defoe suggests, not because the Linnen-Draper tells her that she may remarry, but because he remains absent so many years.

Defoe suggests, moreover, that the canon law ought to be changed

so as to permit long-deserted spouses such as Moll lawfully to remarry.⁴⁹ Just as the Bigamy Act presumes that a long-absent and silent spouse has passed away, so should English canon law.⁵⁰ As a practical matter, Defoe shows, it is inaccurate as well as harmful for the law to continue to view Moll as the Linnen-Draper's wife. The law, rather, ought to recognize Moll's union with Jemy as valid. At an important moment in the novel, Moll, in fact, invites us to consider the idea that she might be "legally married" to Jemy. Mother Midnight refuses to believe that Moll is truly married and thus Moll resigns herself to the fact that, at the midwife's house, she is to "pass for a Whore" (221), but she struggles to convince herself—and her readers—that her marriage to Jemy is legitimate. "Really in this Case," she insists, "I was not a Whore, because legally Married, the force of my former Marriage excepted" (236). In this wonderfully equivocal sentence, Moll again invokes the law's prohibition on her remarriage immediately after she contests it. However, this time, she asserts, albeit tentatively, that she is Jemy's lawful wife. In this way, she conveys her desire for legal recognition of her union, and Defoe exposes the gap between the law as it is and the law as it ought to be. Defoe suggests that Moll's desire for legal recognition is entirely reasonable: she

49 In *Roxana*, the heroine's husband explains that "he wished there had been a Law made, to empower a Woman to marry, if her Husband was not heard of in so long time; which time, he thought, shou'd not be above four Year, which was long enough to send Word in, to a Wife or Family, from any Part of the World." Defoe, *Roxana, The Fortunate Mistress*, ed. David Blewett (New York: Penguin, 1987), 127. Spiro Peterson detects in this remark an allusion to a passage in Milton's *Tetrachordon* describing an ancient Roman law that permitted a wife to remarry if her husband remained absent for four years. According to Peterson, Defoe "severely disagreed with [Milton], and thus certainly with Roxana's Fool, on the matter of divorce in his journalistic writings and [his] *Treatise*." Spiro Peterson, "The Matrimonial Theme of Defoe's *Roxana*," *PMLA* 70 (1955), 174–75. Peterson, however, confuses the grounds of Defoe's disagreement with Milton. Defoe objects to Milton's suggestion that a couple might dissolve their own union—not to the idea that a wife might remarry at some point after her husband deserts her.

50 At the end of the passage in *Conjugal Lewdness* (1727) in which Defoe criticizes Milton's argument for consensual divorce, he asserts, "nothing releases [an unhappy couple] ... but redemption by death" (35). Although it might be argued that Defoe changed his mind about the implications of desertion in the years between writing the novel and the treatise, and that he means "death" to be taken literally here, I would submit that this language does not undermine the reformist argument that he offers in *Moll Flanders*. This argument, I am suggesting, depends upon the idea that a long-absent and silent spouse is as good as dead to the other spouse, and that the law ought, in all fairness, to treat that spouse as such.

ought to be able lawfully to marry Jemy.⁵¹

We find, then, buried in *Moll Flanders* a powerful argument for legal change. Defoe uses Moll's illicit relationship with Jemy to highlight the need for reform in English marriage law. Pufendorf's argument notwithstanding, there was enormous reluctance to permit deserted spouses to remarry in early modern England. Desertion would, in fact, not be recognized as a basis for a full divorce in England until well into the twentieth century.⁵² It should not be surprising, though, that Defoe articulates this reformist position. We need look only to *An Essay upon Projects* (1697) to discern his broad commitment to social reform and his specific concern about the plight of single women. One of the "projects" that he proposes in this essay, after all, is an insurance scheme—a "Friendly-Society"—for widows.⁵³ In *Moll Flanders*, Defoe criticizes the law for failing to recognize that Moll is, for all intents and purposes, a widow. The best way to alleviate the problems created by the Linnen-Draper's desertion and lengthy absence, Defoe shows, is to permit her to remarry.



Defoe's portrait of Moll's experiences in America develops the novel's implicit argument for legal change, while offering a vision of improved conjugal life. Defoe attempts to address the problem of women's vulnerability and insecurity in marriage by reimagining the relationship between the husband and the wife. At the end of the novel, Moll gains some power and relative autonomy in her union with Jemy. Whereas Moll relies upon her brother-husband,

51 Mason does not perceive that Moll seeks legal sanction for her union with Jemy and that Defoe sanctions Moll's desire; thus she overlooks Defoe's implicit critique of English divorce law. She suggests that Moll might have "married more often if the men she met had had as few scruples as she," and she asserts that Defoe "has little interest in expanding the divorce laws" (77, 78). Novak, by contrast, rightly suggests that Defoe approves of Moll's bigamous union with Jemy, but he does not comment on the ways in which Defoe uses this union to articulate an argument for legal change. He suggests simply that Defoe believes that Moll is right to "follow nature" and to form another (illicit) marriage. See Novak, 106.

52 During the debates surrounding the Matrimonial Causes Act of 1857, some members of Parliament expressed concern that adding wilful desertion as a grounds for divorce would open the way to collusive divorce by mutual consent. Nearly a full century later, in 1937, Parliament finally passed an act adding desertion for three years to the list of causes justifying a full divorce. See Stone, 310, 403.

53 See Defoe, *An Essay upon Projects*, in *Political and Economic Writings of Daniel Defoe*, ed. W.R. Owens and P.N. Furbank (London: Pickering and Chatto, 2000), 8:76–79.

Humphrey, when she first settles in America, she now leads Jemy to the New World. She decides where they will live and how they will survive. Moll's own savings prove crucial in enabling them to begin their lives anew. Moll's inheritance improves her financial situation further. Through a trust—an instrument of equity, itself designed to promote justice and to counteract the arbitrary rules of the common law⁵⁴—Moll's mother leaves her daughter a “small Plantation” with a “stock of servants and cattle” (420). Rather than reaffirm patriarchal authority, as John Rietz suggests,⁵⁵ Defoe endorses such equitable inventions that protect a wife's property and that enable her to attain a degree of autonomy in her marriage.⁵⁶ Moll's union with Jemy offers a striking contrast to her previous matches. This union is not only grounded in mutual affection, as David Blewett observes,⁵⁷ but it also enables Moll to attain some economic security. Defoe offers this union as an appropriately reconstituted marriage.

Significantly, however, this union remains illicit because the law continues to view Moll as the Linnen-Draper's wife—a point that many scholars have overlooked.⁵⁸ Reconceiving the marital relationship,

54 Under the common law of coverture, a husband acquired ownership of his wife's personal property and control over all of her real property for the duration of her life. In the late seventeenth century, the courts of equity increasingly sanctioned the use of the trust to safeguard married women's property. On the rise of the equity courts and the distinction between equity and common law, see Baker, 112–34; on the use of the trust, see Baker, 553–54. For a discussion of these changes and their relation to Defoe's fiction, see Peterson, 187–89.

55 Rietz, 188.

56 Susan Staves argues that the rules developed by the equity courts concerning married women's property did not clearly improve the position of married women between 1660 and 1833. Her study focuses on women of the propertied classes, however, considering the implications of changes such as the erosion of women's dower rights. Staves, *Married Women's Separate Property in England, 1660–1833* (Cambridge: Harvard University Press, 1990), 31–37. The trust that Moll's mother creates for her daughter undoubtedly improves Moll's own economic position.

57 Blewett, 87.

58 Rietz argues that in Newgate, Moll is reborn “to a life of legitimacy,” and he suggests that this legitimacy is made complete when “the shadow of that [incestuous] marriage is removed from her relationship with Jemy” by the death of her brother-husband (188, 189). Although Bender does not specifically address the question of Moll's illicit sexuality, he argues that Moll internalizes the corrective values of the penal system and that her “secular rehabilitation is complete” (47). Blewett asserts that the end of the novel “is spent in regularizing Moll's life” (87). Zomchick contends that, like eighteenth-century trial reports, *Moll Flanders* “construct[s] a normative female subject with a sexuality dedicated to the production of domestic tranquility” (535); however, he too overlooks the shadow that is cast upon this seeming tranquility by the spectre of Moll's marriage to the Linnen-Draper.

Defoe suggests, is not all that needs to be done to remedy the problem of women's vulnerability and insecurity in society: English marriage law needs to be changed, as well. Through Moll's second, albeit fictitious, marriage to Jemy, the novel reaffirms the need for a more equitable marriage law—one that would enable Moll lawfully to marry Jemy in the lengthy aftermath of her husband's desertion. In the last few pages of the novel, Moll imaginatively participates in such a ceremony. She explains that she can "appear as in a marry'd Condition" (426) now because her brother, Humphrey, has passed away. Hence, she tells her son that she has decided to marry a gentleman from a neighbouring plantation. After some time passes, she lets her son know that she is "marry'd" (426). Moll thus quite literally "*pretend[s]* to Marry again" (108; emphasis added). Given Defoe's commitment to the formal and public exchange of conjugal vows, Moll's pretend marriage is particularly significant. Defoe here registers his endorsement of Moll's illicit union with Jemy—a union that *cannot* be formally celebrated in the world of the novel.⁵⁹ Moll's return to America, then, provides the occasion for Defoe to reaffirm her transgressive match. It is fitting, of course, that Moll reasserts her identity as Jemy's wife in America—a land so rich in symbolism as a site of broken ties and new beginnings. In America, Defoe imagines a new union and a new life for Moll, signalling his dissatisfaction—indeed, break—with English marriage law.⁶⁰

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59 With the exception of the Puritan jurisdictions in New England, Britain's North American colonies did not challenge English divorce policy in any collective or sustained way until the 1770s. Divorce law in Virginia, then, remained the same as in England. Moll would not have been able to obtain a divorce in Virginia, and thus she could not have lawfully remarried Jemy. See Nancy F. Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William and Mary Quarterly* 33 (1976), 586–614.

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