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HOODWINK'D BY CUSTOM: THE EXCLUSION OF WOMEN FROM JURIES IN EIGHTEENTH-CENTURY ENGLISH LAW AND LITERATURE

JUDY M. CORNETT*

[T]hey have nothing to do in constituting Lawes, or consenting to them, in interpreting of Lawes, or in hearing them interpreted . . . and yet they stand striatly tyed by mens establishments, little or nothing excused by ignorance . . .¹

[R]ealizations of logical possibility are thwarted in practice, for women, by the tenacity of structures informed by essentialist conceptions of 'woman' that deny credibility to their projects. It is not enough for a woman simply to refuse the essentialism and act according to her own lights, with the full authority of a competent knower, in the expectation of public acknowledgment.²

* Associate Professor, University of Tennessee College of Law. B.A., J.D. University of Tennessee; M.A., Ph.D. (English) University of Virginia. Earlier versions of this article were presented at the annual conference of the American Society for Eighteenth-Century Studies in 1992 and at a faculty forum at the University of Tennessee College of Law in 1994. I am grateful to the participants in those events for their valuable comments and suggestions. I am especially grateful to Jerry J. Phillips and Patricia Meyer Spacks, both of whom read several drafts of the article. Others to whom I owe a debt of gratitude are Dwight Aarons, Joseph G. Cook, Gabrielle Cowan, Michael H. Hoffheimer, Deseriee Kennedy, Joseph H. King, Margo Maxwell, Tom Mize, Carol Parker, Barbara Stark, Kathryn Temple, Penny Tschantz, and John Zomchick.

1. THE LAWES RESOLUTIONS OF WOMENS RIGHTS 2 (Garland Publishing Co. 1978) (1632) [hereinafter LAWES RESOLUTIONS].

2. LORRAINE CODE, WHAT CAN SHE KNOW? FEMINIST THEORY AND THE CONSTRUCTION OF KNOWLEDGE 187-88 (1991).

I. INTRODUCTION

A.

Legal scholars have begun to recognize that law is a manifestation of culture and that, to be talked about comprehensively, law must be situated within a cultural context. As Richard K. Sherwin notes, "[A]n adequate understanding of our social practices and institutions, including legal practices and institutions, cannot be gained without adequate knowledge of the various underlying cultural models that create and sustain them."³ In this Article I hope to compose a partial history of the construction of women as authoritative actors in the law. I shall limit my focus to eighteenth-century England, a culture seemingly remote from modern concerns about women's legal status, but one that is crucial to any historical understanding of Anglo-American women's exclusion from law-making and law-interpreting institutions, and one that has not been fully appreciated by previous legal scholars. I shall examine a wide range of sources from eighteenth-century law, literature, and philosophy in which women were represented in relation to legal and intellectual authority, and I shall interrogate the culture of eighteenth-century England: "How, given what we believe, must we act; what, given how we act, must we believe[?]"⁴

In Part II, I shall establish the legal ground of my analysis by juxtaposing Blackstone's venerable — and tautological — explanation of women's disqualification from jury service, *propter defectum sexus*, with the exception to that disqualification, the jury of matrons, a special jury impanelled whenever the fact of a woman's pregnancy was at issue. In Part III, I shall shift my attention to literature: Charlotte Lennox's 1752 novel, *The Female Quixote*, in which the heroine is represented as a powerful but idiosyncratic and embattled interpreter. In Part IV, I shall address the sources that most explicitly engage the issue of women's rightful role in the legal system and other social institutions — the writings of the early eighteenth-century feminists. These writers, including Mary Astell and the pseudonymous "Sophia," contentiously confronted the theological explanation for women's exclusion from legal agency and exposed the logical rifts upon which it depended.

3. Richard K. Sherwin, *Lawyering Theory: An Overview: What We Talk About When We Talk About Law*, 37 N.Y.L. SCH. L. REV. 9, 20 (1992).

4. CLIFFORD GEERTZ, *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* 180 (1983).

From these disparate sources it becomes clear that Woman's moral, intellectual, and legal authority was debated in terms of the nature of her Reason. Women's possession of Reason and their ability to deploy it conventionally were seen as problematic. In contrast to the overly emotional creatures painted by the nineteenth century, women were constructed by the eighteenth-century sources under discussion as beings less intelligent than men, less able to convert their perceptions into generalized conclusions. In short, they were represented as untrustworthy judges.

B.

The theme uniting the two epigraphs, written more than 350 years apart, is the construction of women as authoritative knowers. Noting that women are bound by laws they do not make, the (presumably) male author of *The Lawes Resolutions* declares that his treatise is directed not to "the deep learned or searchers for subtilty" but to "woman kind."⁵ He undertakes to educate women about the laws governing them: "[M]ee thinkes it were pittie and impiety any longer to hold from [women] such Customes, Lawes, and Statutes . . . principally belonging unto them."⁶ Thus the author constructs Woman⁷ as both insider and outsider — insider

5. LAWES RESOLUTIONS, *supra* note 1, at 3.

6. *Id.* at 2.

7. Today, "Woman" is a troublesome term, in feminism and in law." Tracy E. Higgins, "By Reason of Their Sex": *Feminist Theory, Postmodernism, and Justice*, 80 CORNELL L. REV. 1536, 1537 (1995); see also Susan Bordo, *Feminism, Postmodernism, and Gender-Scepticism*, in FEMINISM/POSTMODERNISM 133, 135 (Linda J. Nicholson ed., 1990) (noting "a new drift within feminism, a new scepticism about the use of gender as an analytical category"). However, "Woman" was not a problematic category in early modern England. The writers discussed here used the terms "men" and "women" to describe unproblematic groups defined, it seems, by biological attributes. To that extent, the sources discussed here fall prey to the dangers warned against by modern feminist scholars. See Jane Flax, *Postmodernism and Gender Relations in Feminist Theory*, in FEMINISM/POSTMODERNISM 39, 45 (Linda J. Nicholson ed., 1990) ("To the extent that feminist discourse defines its problematic as 'woman,' it, too, ironically privileges the man as unproblematic or exempted from determination by gender relations."); Beth Fowkes Tobin, *Introduction: Feminist Historical Criticism*, in HISTORY, GENDER & EIGHTEENTH-CENTURY LITERATURE 1, 9 (Beth Fowkes Tobin ed., 1994) (noting that because feminist scholarship "tends to isolate women as a specific and separate topic of history," it reinscribes patterns of difference and oppression.") (quoting JOAN WALLACH SCOTT, *GENDER AND THE POLITICS OF HISTORY* 20 (1985)).

Similarly, issues of race, ethnicity, religion, and class do not surface in any systematic way in these sources, which are directed to, and assume an audience of, middle- and upper-class white Protestant Englishwomen. The legal treatises discussed here present an especially totalizing view of Woman, since they discuss women almost exclusively in terms of their family relationships and their (often resulting) relationships to property rights. Obviously, in early modern England there were women of color, women of non-English ethnicities, non-Protestant women, and non-middle-class women. To the extent that these

because she is subject to law, outsider because she is excluded from the processes by which law is made. It is Woman's paradoxical status vis à vis the law that calls forth the author's effort. Only a man, an insider to the creation of law, can communicate the law to the outsiders it governs. Although the author declares that his goal in writing the treatise is to do "peculiar Service to that Sexe generally beloved, and by the Author had in venerable estimation,"⁸ the book enacts the power men wield over women by virtue of men's status as law makers and law interpreters.

According to the author, women's disqualification from making or interpreting law derives from Eve's role in the Fall. Relying on the third chapter of *Genesis*, the author explains "the reason . . . that Women have no voyce in Parliament": "Eve because shee had helped to seduce her husband hath inflicted on her, an especiall bane. In sorrow shalt thou bring forth thy children, thy desires shall bee subject to thy husband, and he shall rule over thee."⁹ The author argues here that women's legal subordination is divinely ordained; he asserts that in excluding women from Parliament, "[t]he common Law here shaketh hand with Divinitie,"¹⁰ and he reiterates the status of seventeenth-century women: "They make no Lawes, they consent to none, they abrogate none. All of them are understood either married or to bee married and their desires [are] subject to their husband . . ."¹¹ In this explanatory narrative, then, Eve's persuasive power over Adam led to divine punishment in the form of women's subordination to men, which the common law of England enforces by excluding women from Parliament and from any position of agency with respect to their own legal status.

The Lawes Resolutions addresses women's status in a specific arena, the law, during a specific historical period. Because Anglo-American women are no longer explicitly excluded from lawmaking institutions, it is tempting to view the paradox taken up by *The Lawes Resolutions* as a dead one. Yet the modern philosopher, Lorraine Code, discerns the same paradox, manifested more subtly and more pervasively, in modern Anglo-American culture. Although women are no longer overtly excluded from the processes by which the laws governing them are produced, they are still not fully accepted as insiders: "In the 1990s women are still largely invisible

women shared cultural identities or legal disabilities that made gender irrelevant or secondary, the sources take little account of these women.

8. LAWES RESOLUTIONS, *supra* note 1 (not paginated).

9. *Id.* at 6.

10. *Id.*

11. *Id.*

as moral and intellectual authorities"¹² Noting the "close connections among knowledge, expertise, and authority,"¹³ Code asserts that the belief in "women's alleged lack of deliberative authority" — originating in Aristotelian thought and enforced by the Christian creation myth — survives in subtle disparagement of women's intellect and operates to deprive women, not only of social recognition of their claimed knowledge, but also of "faith in the credibility of [their] judgment."¹⁴ Without "public acknowledgment,"¹⁵ Code suggests, women cannot establish even an internal ground for the exercise of interpretive authority.¹⁶

C.

Theoretically, my project exists at the intersection of cultural history and New Historicism, both of which draw upon Clifford Geertz's innovative treatment of all constituents of culture as texts to be read. For Geertz, culture is an "acted document," and the relevant question to be asked of all observed phenomena is "what it is . . . that, in their occurrence and through their agency, is getting said."¹⁷ Taking observed phenomena as texts that say something, then, the interpretation of culture consists of "constructing a reading of what happens,"¹⁸ which in turn requires "sorting out the structures of signification . . . and determining their social ground and import."¹⁹ Similarly, according to Lynn Hunt, the new cultural history is concerned with "[s]ymbolic actions":

12. CODE, *supra* note 2, at 186.

13. *Id.* at 181.

14. *Id.* at 186-87.

15. *Id.* at 188.

16. Code's discussion of women's failure to gain "public acknowledgment" as "competent knower[s]" is part of her critique of Cartesian epistemology, which arguably posits as normative a model derived from white male experience, while concomitantly devaluing women's experience and knowledge. *See id.* at ix-xii. Code's critique, in turn, is part of an ongoing project by feminist scholars to explore the potentially gendered underpinnings and implications of Western science and philosophy. *See, e.g.*, SUSAN BORDO, *THE FLIGHT TO OBJECTIVITY: ESSAYS ON CARTESIANISM AND CULTURE* (1987); EVELYN FOX KELLER, *REFLECTIONS ON GENDER AND SCIENCE* (1985); LONDA SCHIEBINGER, *THE MIND HAS NO SEX?: WOMEN IN THE ORIGINS OF MODERN SCIENCE* (1989). Legal scholars, likewise, have begun to address the gender assumptions embedded in seemingly neutral rules. *See, e.g.*, Rosemary C. Hunter, *Gender in Evidence: Masculine Norms vs. Feminist Reforms*, 19 HARV. WOMEN'S L.J. 127 (1996); Elizabeth M. Schneider, *Gendering and Engendering Process*, 61 U. CIN. L. REV. 1223 (1993).

17. CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 10 (1993).

18. *Id.* at 18.

19. *Id.* at 9.

In both art history and literary criticism, representation has long been recognized as the central problem in the discipline: what does a picture or novel do, and how does it do it? What is the relation between the picture or novel and the world it purports to represent? The new cultural history asks the same kind of questions; first, though, it has to establish the objects of historical study as being like those of literature and art.²⁰

Thus, the "central task of cultural history" is "[t]he deciphering of meaning."²¹

Literary criticism has also felt the effect of Geertz's view of cultural analysis. Stephen Greenblatt, generally acknowledged as the founder of the school of literary criticism known as New Historicism, notes that "historians have become increasingly sensitive to the symbolic dimensions of social practice, while literary critics have in recent years turned with growing interest to the social and historical dimensions of symbolic practice."²² Consistent with their belief that "literary and non-literary 'texts' circulate inseparably," New Historicists have noticed "bizarre overlappings" among cultural phenomena.²³ By examining manifestations of culture, both literary and non-literary, in light of one another, New Historicism "disturbs what was previously considered immobile; . . . fragments what was thought unified; . . . [and] shows the heterogeneity of what was imagined consistent with itself."²⁴

Convinced of the value of studying "law in culture,"²⁵ some legal commentators have seen New Historicism as a promising methodology because it authorizes "reading against every cultural text to discover the social forces at work *sub silentio* [sic] within it" in an "attempt[] to elucidate the contingent values of the present by historicizing and demythologizing the cultural forms of the past."²⁶

20. Lynn Hunt, *Introduction: History, Culture, and Text*, in *THE NEW CULTURAL HISTORY* 1, 16-17 (Lynn Hunt ed., 1989).

21. *Id.* at 12.

22. Stephen Greenblatt, *Culture*, in *CRITICAL TERMS FOR LITERARY STUDY* 225, 230 (Frank Lentricchia & Thomas McLaughlin eds., 1995).

23. H. Aram Veaser, *Introduction*, in *THE NEW HISTORICISM* ix, xi (H. Aram Veaser ed., 1989). An extreme view of what New Historicists do is articulated by John Morrison: "[W]e can link anything to anything else because everything is history." John Morrison, *Doing Fish: A Review of There's No Such Thing As Free Speech*, 43 *UCLA L. REV.* 521, 528 (1995) (reviewing STANLEY FISH, *THERE'S NO SUCH THING AS FREE SPEECH* (1994)).

24. Hunt, *supra* note 20, at 8 (quoting Michel Foucault, *quoted in* ALLAN MEGILL, *PROPHETS OF EXTREMITY: NIETZSCHE, HEIDEGGER, FOUCAULT, DERRIDA* 234-35 (1985)).

25. Robert Weisberg, *Reading Poethics*, 15 *CARDOZO L. REV.* 1103, 1123 (1994) (reviewing RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992)).

26. Francis J. Mootz III, *Legal Classics: After Deconstructing the Legal Canon*, 72 *N.C. L. REV.* 977, 990-91 (1994). Despite scholarly interest in New Historicism, few legal scholars

Some of the legal scholars most interested in the promise of New Historicism are feminists.²⁷ Among literary critics, the relationship between feminists and New Historicists has been problematic, with some feminists complaining that New Historicism has not sufficiently attended to gender issues.²⁸ Feminist scholarship, however, is the source of many of the assumptions and practices of New Historicism,²⁹ and feminist scholars see affinities between New Historicist methods and the practice in women's studies of "cross cultural montage," in which "(once) untraditional sources, [such as] women's letters and diaries, women's manuals, women's novels, even seances were juxtaposed with more traditional and public texts."³⁰ Like New Historicism, women's studies challenges the traditional definition of history by focusing, not solely on political events, but on "representation, role prescription, ideas, values, psychology and the construction of subjectivity."³¹ Thus, the interests of feminists and New Historicists, far from being opposed, are closely aligned.

D.

It has seldom been appreciated that when Blackstone crystalized his famous rationalization for women's disqualification as jurors, English culture was openly suspicious of women as reasoners. Under the later "separate spheres" theory, women were suspect reasoners because they were seen as overly emotional

have explicitly aligned their projects with this methodology. *But see* Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship,"* 1991 DUKE L.J. 455, 457 n.5 ("[M]y efforts to draw out homologous relationships between developments in law and developments in literary culture — without insisting that one is somehow determined by the other — have something in common with the techniques of 'New Historicism.'"). More commonly, scholars draw upon the techniques and assumptions of New Historicism without feeling obliged to explicitly acknowledge their allegiance. *See, e.g.,* Kathryn Temple, *Johnson and Macpherson: Cultural Authority and the Construction of Literary Property*, 5 YALE J.L. & HUMAN. 355 (1993).

27. *See* Katharine T. Bartlett, *Tradition, Change, and the Idea of Progress in Feminist Legal Thought*, 1995 WIS. L. REV. 303, 326 (noting that feminists may benefit from an idea of progress derived from "a historical organization relying on multiple narratives, local and regional histories, plural perspectives, thick descriptions, and irreducible particularities"); Joan Chalmers Williams, *Culture and Certainty: Legal History and the Reconstructive Project*, 76 VA. L. REV. 713, 737 (1990) (lauding scholarship exploring multifarious manifestations of "women's culture" in American history).

28. *See* Judith Lowder Newton, *History as Usual? Feminism and the "New Historicism,"* in *THE NEW HISTORICISM*, *supra* note 23, at 152, 155.

29. *See id.* at 152-53; Jerome J. McGann, *Introduction: A Point of Reference*, in *HISTORICAL STUDIES AND LITERARY CRITICISM* 3, 4 (Jerome J. McGann ed., 1985).

30. Newton, *supra* note 28, at 154.

31. *Id.*

("emotion" representing the opposite of "reason"); but in the eighteenth century, English culture debated women's proper role as authoritative lawmakers and interpreters in terms of their Reason, not their emotions. By treating the jury of matrons as a "signifying practice" that can be thickly described and by placing the jury of matrons within a cultural context in which the nature of Woman and her concomitant right to exercise authority was debated in both literary and philosophical terms, we can see clearly what New Historicist critic Louis Montrose has called

an equivocal process of *subjectification*: on the one hand, shaping individuals as loci of consciousness and initiators of action — endowing them with *subjectivity* and with the capacity for agency; and, on the other hand, positioning, motivating, and constraining them within — *subjecting them to* — social networks and cultural codes that ultimately exceed their comprehension or control.³²

Woman's authority, her access to Reason, her very subjectivity — these myriad associations as they circulated in eighteenth-century English law, literature, and philosophy, form the topic of this Article.

II. THE EXCLUSION OF WOMEN FROM JURIES

A. Generally

Stimulated, perhaps, by the recently decided controversy over the constitutionality of gender-based peremptory challenges,³³ scholars in recent years have shown a great deal of interest in the exclusion of women from Anglo-American juries.³⁴ These scholars have usefully reminded us that jury service has always been considered "an important element of full citizenship."³⁵ Because the jury is "an instrument of self-governance," jury service "enable[s] citizens to participate in public life."³⁶ These scholars point out that, not

32. Louis A. Montrose, *Professing the Renaissance: The Poetics and Politics of Culture*, in *THE NEW HISTORICISM*, *supra* note 23, at 15, 21.

33. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994).

34. See Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139 (1993); Carol Weisbrod, *Images of the Woman Juror*, 9 HARV. WOMEN'S L.J. 59 (1986); Joanna L. Grossman, Note, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 STAN. L. REV. 1115 (1994). See generally Carole L. Hinchcliff, *American Women Jurors: A Selected Bibliography*, 20 GA. L. REV. 299 (1986).

35. Grossman, *supra* note 34, at 1122.

36. *Id.* at 1121.

surprisingly, suffragists linked the right to serve on juries with the right to vote.³⁷ Despite recent scholars' insights, however, their historical analysis has focused primarily on nineteenth and early twentieth-century America.³⁸ During this period, as Carol Weisbrod correctly points out, "[a] central assumption made by both sides in these debates was that woman's special sphere was the home."³⁹

37. See Babcock, *supra* note 34, at 1165 ("From the beginning their [suffragists'] struggle was also about the right to serve on juries. The two causes were the twin indicia of full citizenship both in the minds of woman suffragists and in the attitudes of American society."); Weisbrod, *supra* note 34, at 63 ("The early debate over women's jury service was part of a more general discussion of women's participation in the public sphere which focused on the issue of women's suffrage."). It should be noted, however, that passage of the Nineteenth Amendment did not automatically secure women's right to serve on juries. See Grossman, *supra* note 34, at 1136-38. Grossman notes the astounding fact that "[n]ot until 1968 could women serve as jurors in all fifty states." *Id.* at 1138.

38. See Babcock, *supra* note 34, at 1162-72; Weisbrod, *supra* note 34, at 63-67; see also Grossman, *supra* note 34, at 1133-38.

39. Weisbrod, *supra* note 34, at 62; see also Babcock, *supra* note 34, at 1167 ("The apparent fear was that a public woman would no longer have time for the domestic duties that were her higher and finer calling. Time spent 'fore the justice seat,' would, moreover, be a pollutant for women who were supposed to inhabit an ideal world of nurturance and tenderness.").

When Parliament debated a proposed amendment to the Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo. 5, ch. 71 (Eng.) (granting women the right to serve on all juries) that would have permitted the judge to order that a case be tried by a jury composed entirely of one sex, the Members' comments reveal all the features noted by Babcock and Weisbrod in America: the emphasis on jury service as a privilege of citizenship and the linkage between voting and jury service, see 120 PARL. DEB., H.L. (5th ser.) 388 (remarks of Major Greame) ("After all, women are taking up their position in the State largely as a position of equal citizenship today. They have accepted that position during the War, and the extension of the franchise itself is very largely the recognition of the position that women have rights as citizens."); and the discourse of delicacy and domesticity, see *id.* at 383 (remarks of Sir E. Hume-Williams) ("Anyone who has experience of some of the terrible cases that have to be tried in our Courts, and the almost revolting evidence that, unfortunately, has to be given — evidence which is almost unfit for any jury to hear — will agree with me that it is impossible that such cases should be tried before a jury composed of women, or partly of men and partly of women."); *id.* at 391 ("Take a case where the sole dispute is as to the price of clothes or the fit of a dress . . . I should think a jury of women would determine it in about half the time [as a jury of men] . . . On the other hand, there might be a case of a purely commercial dispute involving the commercial customs of London, the interpretation of charter parties, and all sorts of technical terms which the ordinary woman cannot understand. It would be equally appropriate . . . that it should be tried by a jury of men.").

These remarks were countered by comments reflecting a traditionally liberal position, see *id.* at 383 (remarks of Major Hills) ("It may be said that women should be kept more apart, that they should be kept from contact with rough and brutal phases of life. But bear in mind . . . the insistent demand of women for equality with men — equality of opportunity, equality of sacrifice, equality of duty."); and a more radical feminism, see *id.* at 386-87 (remarks of Captain Elliot) ("it may not be practicable to have women juries to try certain cases, because of the conventions which have grown up by which you may not mention certain things in the presence of a woman; but I would ask this Committee to consider that it is part of the Victorian attitude that apparently while you may not say things to women you may do things to women . . . When you have swept away the shame of the streets, and when, if ever, we forbid women in hospitals to perform the revolting duties which they have to do, then we can

But, as Londa Schiebinger has persuasively demonstrated, the "separate spheres" theory for restricting women's civic role came to be dominant only in the latter half of the eighteenth century.⁴⁰ Although there were occasional references in eighteenth-century popular discourse to essentialist conceptions of women's proper role,⁴¹ the dominant rationale for women's exclusion from many aspects of public life was that they lacked something men had; as Anne Williams puts it, "Western culture has generally insisted that 'reason' is not a feminine strength. During the Enlightenment, the age-old debate about what it was, exactly, that women *lacked*, focused on their supposed incapacity for this 'highest' and most definitive human capacity."⁴² The relationship between women and Reason was a central issue in non-legal discourse in eighteenth-century England, and literary scholars like Williams have long recognized the implications of this issue for the way women are represented.⁴³ Although legal scholars have not shown much interest in the construction of female rationality, this issue adds enormous explanatory power to the legal strictures on women's public role, especially their exclusion from jury service.⁴⁴

come with clean hands and say, 'We do not want you to listen to certain rather unpleasant phrases'; . . . Let us remember that hundreds of thousands of women are suffering in their bodies things which we think we are doing something to remove by protecting their ears.').

The amendment was adopted. Section 1(b) of the Act provided:

[A]ny judge . . . may, in his discretion, on an application made by or on behalf of the parties . . . or at his own instance, make an order that the jury shall be composed of men only or of women only as the case may require, or may, on an application made by a woman to be exempted from service on a jury in respect of any case by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemption.

Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo. 5, ch. 71, § 1(b) (Eng.).

40. See SCHIEBINGER, *supra* note 16, at 216; see also DAVID H. RICHTER, *THE PROGRESS OF ROMANCE: LITERARY HISTORIOGRAPHY AND THE GOTHIC NOVEL* 64 (1996) (noting that the conceptual split between public and private spheres that underlay the cult of domesticity was not firmly established until 1820-1850).

41. An example is Richard Steele's famous declaration:

I do not mean it an Injury to Women, when I say there is a Sort of Sex in Souls. I am tender of offending them, and know it is hard not to do it on this Subject; but I must go on to say, That the Soul of a Man and that of a Woman are made very unlike, according to the Employments for which they are designed. The Ladies will please to observe, I say, our Minds have different, not superior Qualities to theirs.

RICHARD STEELE, *THE TATLER* NO. 172, May 16, 1710, reprinted in 2 *THE TATLER* 443, 444 (Donald F. Bond ed., 1987) (footnote omitted).

42. ANNE WILLIAMS, *ART OF DARKNESS: A POETICS OF GOTHIC* 170 (1995).

43. See, e.g., FELICITY A. NUSSBAUM, *THE BRINK OF ALL WE HATE: ENGLISH SATIRES ON WOMEN 1660-1750* (1984).

44. It should be noted at the outset that the number of women who were, as a practical matter, excluded from jury service solely because of their sex was probably very small. The property qualification for jury service in 1692 stood at £10 in freehold estate. 4 W. & M., ch.

In eighteenth-century England, as Janelle Greenberg notes, single women "enjoyed, for the most part, the same rights and responsibilities as did men" in the private sphere.⁴⁵ They could own property, make contracts, and sue and be sued in their own names.⁴⁶ However, "in public law, there was no place for [women], except on the throne."⁴⁷ In addition to being disqualified from jury service, women could not vote and could not serve in Parliament.⁴⁸

In early modern England, jury service was a much more political act than is jury service in modern-day America. The medieval jury, from which the early modern jury developed, was an integral part of local government and functioned very differently from the modern Anglo-American trial jury. Rather than being limited to factfinding and law application in a discrete legal controversy, the medieval jury functioned as an investigative or administrative body. Writing of royal jurors, one scholar notes:

By 1450, juries had become the political eyes and ears of the countryside. There was little to do with local affairs that the jury could not touch. In juries, the crown routinely met the country to assess and collect taxes, to clear roads, scour ditches, claim escheats, convict criminals, and protect property; through them, kings labored to maintain at strength the armed forces of the realm and even its ale In a provincial governance that increasingly took the form of government-by-jury, juries had an integral and essential political role to play.⁴⁹

24 (1692) (Eng.), *renewed and extended* by 3 Geo. 2, ch. 25 (1730) (Eng.). Freeholders of both sexes represented only a minority of the population of early modern England; "[m]ost people held land in copyhold or, increasingly, leasehold." AMY LOUISE ERICKSON, *WOMEN AND PROPERTY IN EARLY MODERN ENGLAND* 40 (1993). Moreover, the combination of intestate succession laws that preferred males to females and the tendency of testators to devise land to male descendants while bequeathing moveables to female descendants meant that women were less likely than men to inherit freehold estates. See *id.* at 61-78. Even women of the wealthier classes would presumably have been excluded by the doctrine of coverture unless their separate estates were sufficient to meet the property qualification. In practical terms, therefore, the gender-based exclusion from jury service operated only against upper-class single women (including widows) and upper-class married women having substantial separate estates.

45. Janelle Greenberg, *The Legal Status of the English Woman in Early Eighteenth-Century Common Law and Equity*, 4 *STUD. IN EIGHTEENTH-CENTURY CULTURE* 171, 172 (1975).

46. See *id.*

47. *Id.*

48. See *id.*

49. R.B. Goheen, *Peasant Politics? Village Community and the Crown in Fifteenth-Century England*, 96 *AM. HIST. REV.* 42, 43 (1991) (footnote omitted).

As Sherri Olson has shown, service as juror of a local court tended to correlate highly with service in other local political offices: "the men most frequently called on to fill the important posts of reeve, beadle, bailiff, affeeror, constable, ale taster, collector of court fines, and hayward were men who either had or would serve as juror."⁵⁰ Concomitantly, local jurors were frequently chosen from families having a long tradition of jury service because "[s]uch individuals were more likely to possess the means to stay abreast of local events and benefit from the vast compass of intra- and extrafamilial relationships"⁵¹ Even though the jury had evolved by the eighteenth century into the factfinding body that rendered a verdict in a particular case, the jury continued to play a political role in certain cases, like the Penn-Mead case,⁵² in which the Crown was persecuting its political enemies. In the latter half of the seventeenth century and into the eighteenth century, there was substantial pamphlet literature advocating that grand and petit juries use their power to repel the oppressive use of prosecutorial power.⁵³

50. Sherri Olson, *Jurors of the Village Court: Local Leadership Before and After the Plague in Ellington, Huntingdonshire*, 30 J. BRIT. STUD. 237, 245 (1991).

51. *Id.* at 242; accord Goheen, *supra* note 49, at 53 (noting that "[g]entry families . . . used generations of jury service to help define their claims to provincial political status.").

52. 6 State Trials 951 (1670). The Penn/Mead trial became important to the history of the jury when the Court imprisoned the recalcitrant jurors in that trial for failing to return a verdict of "guilty." One of the imprisoned jurors, Bushell, brought a habeas action in which Chief Justice Vaughn ruled that jurors could not be fined for returning a verdict in accordance with their consciences. *Bushell's Case*, 124 Eng. Rep. 1006 (C.P. 1670). See generally THOMAS ANDREW GREEN, VERDICT ACCORDING TO CONSCIENCE: PERSPECTIVES ON THE ENGLISH CRIMINAL TRIAL JURY 1200-1800, at 200-21 (1985); John A. Phillips & Thomas C. Thompson, *Jurors v. Judges in Later Stuart England: The Penn/Mead Trial and Bushell's Case*, 4 LAW & INEQ. J. 189 (1986).

53. In an anonymous work, THE ENGLISH-MANS RIGHT. A DIALOGUE BETWEEN A BARRISTER AT LAW AND A JURY-MAN (London 1680), a man summoned to jury duty, clearly thinking of the imprisonment of the jurors who failed to convict William Penn, expresses his desire to be excused on the ground that "there sometimes happen nice cases, wherein it may be difficult to discharge ones conscience without incurring the displeasure of the Court, and thence trouble and damage may arise." *Id.* at 1. The barrister enters into a long disquisition on the history and powers of the jury and addresses the prospective juror's fears as follows: "But however will any man that fears God, say that is but an honest Heathen debauch his Conscience, and forswear himself, do his Neighbour Injustice, betray his Countreys [sic] Liberties, and consequently enslave himself and his Posterity, and all this meerly because he is Hector'd and threaten'd a little?" *Id.* at 23. In a 1681 treatise, Lord Somers decries the recent laxity of grand jurors, noting,

It is a wonder that they were not more awakened with the attempt of the late lord chief justice Keyling, who would have usurped a lordly, dictatorial power over the grand jury of Somersetshire, and commanded them to find a bill of indictment for murder, for which they saw no evidence, and upon their refusal, he not only threatened the jury, but assumed to himself an arbitrary power to fine them.

The political nature of the jury helps explain why women could appear in court as litigants (at least, single women could litigate in their own names) and as witnesses, but not as judge, attorney, or juror. All three roles were viewed as public, i.e., political offices. Not only were eighteenth-century Englishwomen barred from holding public office, but they were also subject to ridicule for taking any role in politics. The vicious lampooning of the Duchess of Devonshire's campaign activities in support of Charles James Fox in the 1784 Parliamentary elections demonstrates that not even

JOHN LORD SOMERS, *THE SECURITY OF ENGLISHMEN'S LIVES: OR, THE TRUST, POWER AND DUTY OF GRAND JURIES OF ENGLAND* 17 (London 1766) (1681). With respect to Keyling's action, Somers comments, "Here was a bold battery made upon the antient fence of our reputations, and lives: if that justice's will had passed for law, all the gentlemen of the grand juries must have been the basest vassals to the judges . . ." *Id.* Another author, also said to be Lord Somers, see LLOYD E. MOORE, *THE JURY: TOOL OF KINGS, PALLADIUM OF LIBERTY* 90 n.14 (1973), recounts the events surrounding Bushell's Case, and then opines, "But however, a *Jury* in any Indictment, Presentment, or Information, ought, and may give their Verdict, &c. according to their own Conscience, without any fear of Punishment one way or other." A PERSON OF QUALITY, *A GUIDE TO ENGLISH JURIES* 40-41 (London 1682).

The contest between judge and jury for political power in the eighteenth century was waged most acutely in the seditious libel cases. See generally 2 JAMES OLDHAM, *THE MANSFIELD MANUSCRIPTS AND THE GROWTH OF ENGLISH LAW IN THE EIGHTEENTH CENTURY* 775-808 (1992). The debate about the respective powers of judge and jury in determining whether publication of particular views should be criminal was generalized as a debate over the jury's right to determine questions of law as well as questions of fact. For example, in a 1764 treatise, Joseph Towers refutes the royal courts' view of the jury's power in libel cases, which he summarizes as follows:

[I]f any man is charged . . . with writing, printing, or publishing, any book, pamphlet, or paper, which is in such information or indictment stiled a libel, it is not the business of the jury to enquire, whether such book, pamphlet, or paper, really be a libel, or not; but only into the simple matter of fact, whether the person so charged be the author, printer, or publisher of such book, pamphlet, or paper; and to leave the . . . determination whether it be a libel or not, entirely to the Court.

JOSEPH TOWERS, *AN ENQUIRY INTO THE QUESTION, WHETHER JURIES ARE, OR ARE NOT, JUDGES OF LAW, AS WELL AS OF FACT* 10 (Garland Publishing Co. 1978) (1764). Towers offers the following comment on this relegation of the jury to deciding only factual issues: "But if this principle be once admitted, . . . that for the people of England then to pretend to be in possession of a freedom of the press, would be ridiculous. They would then have no liberty of the Press, but what the judges of the court of King's Bench might think proper to grant them . . ." *Id.* Finally, in 1792, Earl Stanhope comments upon the theory that juries could decide only the facts, and not the law, in libel cases:

It will scarcely be believed by Posterity, that at the End of the Eighteenth Century, a System should have been attempted to be established, that Juries should be directed to find a Man Guilty of a Crime, for publishing a Paper which contains no criminal Matter whatsoever; and that the Question of the Criminality or Innocence of the Person thus blindly convicted by the Jury, should afterwards be decided by Judges appointed by the Crown: which System, if it had been established, would have annihilated at one Blow the Liberty of England.

CHARLES EARL STANHOPE, *THE RIGHTS OF JURIES DEFENDED* 4 (London 1792).

wealth or social class could overcome the prejudice against women in public roles.⁵⁴ In 1778 even the spectator gallery of Parliament was closed to women.⁵⁵ Not only could women not participate in lawmaking as authoritative actors, but they were prohibited even from observing the legislative process.

As Pollock and Maitland note, "No text-writer, no statute, ever makes any general statement as to the position of women. This is treated as obvious . . ."⁵⁶ More precisely, women's legal subordination and their concomitant exclusion from the public sphere were not theorized. Beginning in 1632 with *The Lawes Resolutions of Womens Rights*⁵⁷ and continuing throughout our period with *Baron and Feme* (1700),⁵⁸ *A Treatise of Feme Coverts: Or, the Lady's Law* (1732),⁵⁹ and *The Laws Respecting Women* (1777),⁶⁰ treatise writers focused on the legal rights of women. With the exception of the rights of "Queen Consorts" and "Queen Dowagers,"⁶¹ however, these treatises do not treat women as citizens. Instead, they focus almost exclusively on women's rights in various family relationships (as wife, daughter, mother) and, relatedly, their rights in relation to property (as ward, wife, widow).⁶² Even Locke's magisterial *Second Treatise of Government* failed to "consider[] the anomalous political status of single adult women."⁶³ When Mary Astell broke this silence by writing of the civil, legal, and political rights of women, her "construction of herself as a free British citizen, subject to no one but her monarch, was a radical reconception of women's place in the polity."⁶⁴

Although some legal writers explicitly mention women's restricted rights, they do not offer any explanatory narrative. For example, in his lectures at Oxford in 1767-1773, Sir Robert Chambers, discussing the qualifications of ambassadors, notes:

54. See LINDA COLLEY, *BRITONS: FORGING THE NATION 1707-1837*, at 242-48 (1992).

55. See *id.* at 248-49.

56. 1 SIR FREDERICK POLLOCK & FREDERIC W. MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, at 482 (2d ed. 1898).

57. *LAWES RESOLUTIONS*, *supra* note 1.

58. *BARON AND FEME. A TREATISE OF THE COMMON LAW. CONCERNING HUSBANDS AND WIVES*. (Garland Publishing Co. 1978) (1700).

59. *A TREATISE OF FEME COVERTS: OR, THE LADY'S LAW* (Garland Publishing Co. 1978) (1732).

60. *THE LAWS RESPECTING WOMEN* (Oceana Publications, Inc. 1974) (1777).

61. *Id.* at 2-3.

62. See, e.g., *id.* at 66-70, 107-292.

63. Ruth Perry, *Mary Astell and the Feminist Critique of Possessive Individualism*, 23 *EIGHTEENTH-CENTURY STUD.* 444, 452 (1990).

64. *Id.*

strange doctrines . . . which some authors have maintained, as, for instance, that neither persons under the age of twenty-five years nor women can be employed in embassies, whereas daily experience contradicts the former part of the rule, and with regard to the latter, instances may be found in which the general impropriety of conferring such offices on women has been overbalanced by particular reasons⁶⁵

Chambers clearly expects his audience to comprehend and appreciate the "general impropriety" of appointing women to "offices" such as ambassador. It is this "general impropriety" that kept women out of the jury box, and it is this "general impropriety," the *donée* of the preceding passage, that is of especial interest. What was the foundation of this general impropriety? What did the eighteenth century believe about women that made it possible to assert this general impropriety as a given?

With respect to women's exclusion from juries, Blackstone's explanation is most frequently quoted. After noting the overriding requirement that a juror be "*liber et legalis homo*,"⁶⁶ Blackstone went on to explain, "Under the word *homo* also, though a name common to both sexes, the female is however excluded, *propter defectum sexus* [on account of a defect of sex]"⁶⁷ This explanation is, of course, a tautology: women are excluded from jury service because they are women and not men. But by noting the disjunction between the linguistic inclusion and the practical exclusion of women from the jury, Blackstone seems to display some discomfort and some sense of incongruity.

In addition to women, Blackstone discusses two other classes of persons disqualified from jury service: aliens, who suffer from a "defect of birth,"⁶⁸ and bondsmen or slaves, who suffer from a

65. 1 SIR ROBERT CHAMBERS, A COURSE OF LECTURES ON THE ENGLISH LAW 1767-1773, at 264 (Thomas M. Curley ed., 1986). Chambers was assisted by Samuel Johnson in composing his lectures. Thomas M. Curley, *Preface* to 1 SIR ROBERT CHAMBERS, A COURSE OF LECTURES ON THE ENGLISH LAW 1767-1773, at xi.

66. 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *362 (University of Chicago Press 1979) (1765-69). The inclusion of the term "liber" in this descriptive phrase was the subject of controversy in the twelfth and thirteenth centuries. For a history of this controversy, see Goheen, *supra* note 49, at 56-60.

67. 3 BLACKSTONE, *supra* note 66, at *362. The very fact that Blackstone offers an explanation for women's exclusion from jury service may indicate that there was growing pressure to justify the exclusion. Only thirty years earlier, in his 1736 treatise, *The Pleas of the Crown*, Sir Matthew Hale did not even mention the exclusion of women from juries, much less seek to explain it. See 2 SIR MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN *154-56, *264-65 (1736). I am indebted to Michael H. Hoffheimer for this observation.

68. See 3 BLACKSTONE, *supra* note 66, at *362.

"defect of liberty."⁶⁹ We might hope that the three categories of persons disqualified from jury service would share common characteristics that would help explain why women were excluded. Unfortunately, that does not appear to be the case. By Blackstone's time, the exclusion of "bondsmen" from juries was practically a dead letter. The class of persons disqualified from jury service because of the "defect of liberty" are probably best understood as "serfs" or "villeins," who later became tenants by copyhold.⁷⁰ Because villeinage was abolished in 1660, and because copyholders were allowed to serve on juries in the royal courts beginning in 1692,⁷¹ the exclusion of "slaves" and "bondsmen" from juries could not have operated very frequently in the eighteenth century.

The exclusion of women from juries is more analogous to the exclusion of aliens,⁷² who could serve, from Norman times by custom and from the fourteenth century by statute,⁷³ on a special jury — composed one-half of "denizens" and one-half of aliens — whenever one of the litigants was an alien.⁷⁴ Flourishing in the local mercantile courts known as "staple courts," this mixed jury was originally intended to facilitate the application of mercantile custom as law in disputes between English and foreign merchants.⁷⁵ By the mid-seventeenth century, however, aliens on the jury *de medietate linguae* were not required to come from the alien litigant's country or know anything of the controversy. As Giles Duncombe puts it, "[I]t matters not, whether the Moiety of Aliens be of the same Country as the Alien, Party to the Action, is . . . Aliens of any Tongue may serve. . . . *Medietas Linguae* is as much as to say, half *English*, and half of another Tongue or Country

69. *Id.*

70. See 1 POLLOCK & MAITLAND, *supra* note 56, at 375, 421. For a discussion of villein tenure, see generally CHARLES MONTGOMERY GRAY, *COPYHOLD, EQUITY, AND THE COMMON LAW* (1963).

71. See 4 & 5 W. & M., ch. 24, § 15 (1692) (Eng.).

72. As Marianne Constable makes clear, the definition of "alien" for jury exclusion purposes was fluid over the centuries between the Norman Conquest and the eighteenth century. See MARIANNE CONSTABLE, *THE LAW OF THE OTHER: THE MIXED JURY AND CHANGING CONCEPTIONS OF CITIZENSHIP, LAW, AND KNOWLEDGE* 9-25 (1994) (discussing the operations of the staple court and the mixed jury).

73. Statute of the Staple, 1353, 27 Edw. 3, ch. 8 (Eng.); 1354, 28 Edw. 3, ch. 13, § 2 (Eng.); see also CONSTABLE, *supra* note 72, at 96-100.

74. See CONSTABLE, *supra* note 72, at 96-98. By the sixteenth century, the mixed jury of aliens and denizens had come to be known as the jury *de medietate linguae*, or the jury "of the half tongue." *Id.* at 112-13; see James C. Oldham, *The Origins of the Special Jury*, 50 U. CHI. L. REV. 137, 167 (1983).

75. See CONSTABLE, *supra* note 72, at 96-102.

whatsoever.”⁷⁶ According to Constable, the Babelian quality of the mixed jury by the time of Blackstone signalled the demise of the “community basis for the mixed jury” and “left the institution bereft of meaning.”⁷⁷ However, both Blackstone and Duncombe suggest a continuing rationale for the mixed jury: to counteract nationalistic bias on the part of the jurors who were denizens. As Blackstone explains:

[W]here either party is an alien born, the jury shall be one half aliens and the other denizens . . . for the more impartial trial. . . . But where both parties are aliens, no partiality is to be presumed to one more than another; and therefore . . . the whole jury are then directed to be denizens.⁷⁸

Or, as Duncombe puts it, “though the *English* may be supposed to favour themselves more than Strangers, yet when both Parties are Aliens, it will be presumed they favour both alike, and so [are] indifferent.”⁷⁹ From its origins in Norman times to its final abolition in 1870,⁸⁰ the rationale for the mixed jury changed from expertise (substantive knowledge of mercantile custom)⁸¹ to interest (presumed partiality of aliens for other aliens).

B. *The Jury of Matrons*

Like aliens, women could serve on a special jury, the “jury of matrons,” a jury of twelve “matrons” or “discreet women.”⁸² Unlike the jury *de medietate linguae*, which could be impanelled to try any factual issue whenever one of the litigants was an alien, the jury of matrons was available on only one issue: a woman’s pregnancy. In use since the time of Bracton,⁸³ the jury of matrons appears only infrequently in the reported cases from the sixteenth through the eighteenth centuries. The jury could be impanelled in two situations. First, when a female prisoner sentenced to death, like Moll

76. GILES DUNCOMBE, TRIALS PER PAIS. OR, THE LAW OF ENGLAND CONCERNING JURIES BY NISI PRIUS, & C. 195 (William S. Hein & Co. 1980) (1725).

77. CONSTABLE, *supra* note 72, at 126.

78. 3 BLACKSTONE, *supra* note 66, at *360.

79. DUNCOMBE, *supra* note 76, at 195.

80. See Naturalization Act, 1870, 33 & 34 Vict., ch. 14, § 5 (Eng.); Deborah A. Ramirez, *The Mixed Jury and the Ancient Custom of Trial by Jury De Medietate Linguae: A History and a Proposal for Change*, 74 B.U. L. REV. 777, 786-87 (1994).

81. See CONSTABLE, *supra* note 72, at 96-102.

82. 4 BLACKSTONE, *supra* note 66, at *395.

83. See 1 POLLOCK & MAITLAND, *supra* note 56, at 484.

Flanders' mother, "pleaded her Belly"⁸⁴ in order to postpone the execution, the judge would direct the jury of matrons to determine whether she was "*quick with child* (for barely, *with child*, unless it be alive in the womb, is not sufficient)."⁸⁵ Second, in the case of a "suppositious heir," when a widow claimed to be pregnant with a child who would inherit from her deceased husband, the remaining heirs could sue out the writ *de ventre inspiciendo* directing the sheriff to impanel a jury of matrons to determine whether the widow was indeed pregnant.⁸⁶

Scholars examining women's jury service frequently mention the jury of matrons as an exception to women's exclusion from the jury.⁸⁷ But no legal scholar has thoroughly analyzed the significance of the exception. If we believe that "the exception proves the rule," or in other words, that we can learn something about the rule by studying its exceptions, then we should be able to learn something about the rationale for women's disqualification from jury service in general by studying the one situation in which women were allowed to serve as jurors.

What qualified a woman to serve on the jury of matrons? Commentators have suggested that the "matrons" of the jury were midwives⁸⁸ or "married women or widows who had experience with childbirth."⁸⁹ The distinction between a "midwife" and a married woman or widow having "experience with childbirth" would not have been a sharp one. Although midwives in England were licensed by the Bishop until the licensing system began breaking down in the 1720s,⁹⁰ licensure did not guarantee skill: "the

84. DANIEL DEFOE, *MOLL FLANDERS* 8 (Edward Kelly ed., Norton Critical ed. 1973) (1722). Modern American law retains the prohibition on execution of a pregnant woman: "A sentence of death shall not be carried out upon a woman while she is pregnant." 18 U.S.C.A. § 3596(b) (West Supp. 1997). I am indebted to Dwight Aarons for this reference.

85. 4 BLACKSTONE, *supra* note 66, at *395.

86. See *Ex parte Aiscough*, 24 Eng. Rep. 873 (Ch. 1730); Oldham, *supra* note 74, at 171-72. In addition to these two reported uses of the jury of matrons, an all-female jury was used in Princess Ann County, Virginia in 1696 to search Grace Sherwood, a woman accused of witchcraft, for "witch marks." The sheriff was ordered to "request as many antient and knowing women as possible [sic] he can to search carefully for all marks or spots about her body not usual on others, etc." WINFIELD S. NEVINS, *THE WITCHES OF SALEM* 45 n. (1994). I am indebted to Tom Mize for this reference.

87. See Weisbrod, *supra* note 34, at 59-60 n.2; Grossman, *supra* note 34, at 1133 n.102.

88. See Martha Minow, *Stripped Down Like a Runner or Enriched by Experience: Bias and Impartiality of Judges and Jurors*, 33 WM. & MARY L. REV. 1201, 1205 (1992).

89. Oldham, *supra* note 74, at 172.

90. See JEAN DONNISON, *MIDWIVES AND MEDICAL MEN: A HISTORY OF THE STRUGGLE FOR THE CONTROL OF CHILDBIRTH* 35 (2d ed. 1988). In a short section entitled "Of Midwives," the author of *The Laws Respecting Women* (1777) states: "In order for a midwife to obtain a licence, she must be recommended under the hands of matrons who have experienced her Skill, and also of the parish minister certifying as to her life and conversation, and that she

Bishops [were] concerned more with the orthodoxy of the midwife than with her professional skill."⁹¹ In difficult births, the midwife was frequently called upon to baptize the infant's head before its delivery. The Protestant dread of an infant's being baptized into the Roman Catholic Church by an unscrupulous midwife led to the church's assertion of authority over the profession.⁹² According to Mrs. Cellier, who petitioned James II in 1688 to grant a royal charter for a corporation of midwives, during the mid-sixteenth century the licensing process included an examination "before six skilful Midwives, and as many Chirurgions expert in the Art of Midwifery."⁹³ Cellier asserted, however, that this practice ended when licensing duties were transferred to the Doctors Commons.⁹⁴ The prosecution of unlicensed midwives, therefore, was based on the desire for orthodoxy rather than any concern for ensuring a minimum level of skill.⁹⁵

Certainly, since no formal education in midwifery was available, apprenticeship offered the best opportunity for gaining the necessary skills and knowledge.⁹⁶ However, even apprenticeship was not required of midwives. In the words of Raynold, a sixteenth-century commentator, some midwives' training consisted solely of "haunting women in their labours."⁹⁷ Raynold apparently refers here to the custom of summoning all the neighborhood women to witness a birth. These "Gossips,"⁹⁸ who observed the midwife at work and who might be called upon to assist in emergencies, may well have practiced midwifery with or without the benefit of an apprenticeship or a license.

Until the eighteenth century, midwifery was the only non-domestic profession dominated by women. Women who practiced midwifery, "whether skilled or unskilled, regarded it as the chief business of their lives, and depended upon it for their maintenance."⁹⁹ Although the "man-midwife" had appeared in England in the early 1600s, he usually was employed only in emergencies.¹⁰⁰

is a member of the church of England." THE LAWS RESPECTING WOMEN, *supra* note 60, at 10-11.

91. ALICE CLARK, *WORKING LIFE OF WOMEN IN THE SEVENTEENTH CENTURY* 276 (1919).

92. *See id.* at 277-78.

93. *Id.* at 276.

94. *See id.* at 276.

95. *See id.* at 278-79.

96. *See id.* at 269.

97. *Id.*

98. ROBERT A. ERICKSON, *MOTHER MIDNIGHT: BIRTH, SEX, AND FATE IN EIGHTEENTH-CENTURY FICTION* (DEFOE, RICHARDSON, AND STERNE) 11 (1986).

99. CLARK, *supra* note 91, at 265.

100. *See* DONNISON, *supra* note 90, at 33.

Gradually, however, men had begun to challenge the ascendancy of the female midwife, primarily by denying women opportunities for education in the sciences.¹⁰¹ After the introduction of the forceps around 1720, the female midwife rapidly lost ground; custom prohibited female midwives from using instruments, and the usefulness of the forceps in difficult births guaranteed increasing popularity for the man-midwife.¹⁰² The exclusion of females from scientific education and the growing prestige of the "man-midwife" led to a flurry of treatises on midwifery, authored by both female midwives and male physicians, beginning in the late seventeenth century and continuing throughout the eighteenth.¹⁰³ This period also witnessed agitation for better education and training for midwives. Proposals were usually based upon the French system of teaching hospitals, and in fact, several "lying-in" hospitals were established in England in the eighteenth century.¹⁰⁴

In several of the midwives' manuals, midwives are equated with matrons. In his 1637 work, *Expert Midwife or An Excellent and most necessary Treatise of the generation and birth of Man*, Jacob Rueff entitled his preface "To all grave and modest Matrons."¹⁰⁵ Nicholas Culpeper, in his *Directory for Midwives*, addresses his readers as follows: "Worthy Matrons, You are of the number of those whom my soul loveth"¹⁰⁶ Despite this apparent equation of midwives and matrons, however, other evidence suggests that the two were not synonymous. In his treatise *The Speculum Matricis*, James Wolveridge notes that the audience for his book will include "not only . . . Learned Scholars, but [also] Grave Matrons, and Expert Midwives."¹⁰⁷ Similarly, suggesting that not all members of the jury of matrons were

101. See CLARK, *supra* note 91, at 269-73.

102. See DONNISON, *supra* note 90, at 34. Of course, the unskilled or indiscriminate use of the forceps was condemned. Tristram Shandy's nose is the most enduring example of the mishaps that could attend the use of forceps. LAWRENCE STERNE, *THE LIFE AND OPINIONS OF TRISTRAM SHANDY, GENTLEMAN* (The Odyssey Press 1940) (1760-67). See generally DONNISON, *supra* note 90, at 41-46.

103. See DONNISON, *supra* note 90, at 45; Robert A. Erickson, "The Books of Generation": Some Observations on the Style of the British Midwife Books, 1671-1764, in *SEXUALITY IN EIGHTEENTH-CENTURY BRITAIN* 74-94 (Paul-Gabriel Boucé ed., 1982).

104. See DONNISON, *supra* note 90, at 37-38.

105. Erickson, *supra* note 103, at 90 n.2 (quoting JACOB RUEFF, *EXPERT MIDWIFE OR AN EXCELLENT AND MOST NECESSARY TREATISE OF THE GENERATION AND BIRTH OF MAN* (London, 1637)).

106. CLARK, *supra* note 91, at 271-72 (quoting NICHOLAS CULPEPER, *DIRECTORY FOR MIDWIVES* (1651)).

107. Erickson, *supra* note 103, at 76 (quoting JAMES WOLVERIDGE, *THE SPECULUM MATRICIS* (London, 1671)).

midwives, Giles Jacob notes a case involving a "Jury of Women, whereof two were Midwives."¹⁰⁸

The legal sources suggest that all women were viewed as having knowledge and experience in childbirth. In *Ex parte Aiscough*,¹⁰⁹ counsel for the widow argued against a "jury of matrons," and the Chancellor postponed the appointment of a "jury of matrons" until Michaelmas term, but in the meantime allowed the heirs to "send two women at seasonable times, to see whether she is with child."¹¹⁰ A similar use of "women" is found in Giles Jacob's law dictionary, where he declares that the writ *de ventre inspiciendo* is tried "by a jury of Women."¹¹¹ This suggestion that all women are knowledgeable about childbirth may well reflect a conception of women that, in Jean Donnison's view, gradually died out under the influence of rationalist philosophy: the view that the human body "derived its fertility and creative power from arcane interactions of natural forces, benign or otherwise, of which women had been credited with special knowledge."¹¹² It may also reflect the more mundane image of the neighborhood "Gossips" gathered around the childbed.

There is some evidence, therefore, to support both the proposition that only midwives were "matrons" eligible for service on the jury and the proposition that all women were deemed to have knowledge sufficient to judge the issue of pregnancy. The better view seems to be, however, that not all women were considered "matrons" and that not all eligible "matrons" were midwives in the strict sense. The term "matron" seems to have been used in a normative sense that included only the most skilled and morally upright midwives, along with married women and widows who, though not midwives, were "honest," "discreet," and "grave." Blackstone used the term "discreet women" as a synonym for "matrons."¹¹³ The midwife's license recited that the license was granted after "due Examination of divers honest & discreet women."¹¹⁴ The license also enjoined the midwife that

you shall not make, or assign any Deputy, or Deputies to exercise under you, or in your absence the office or Room of a

108. 6 GILES JACOB, THE LAW DICTIONARY 334 (Philadelphia, P. Byrne 1811).

109. 24 Eng. Rep. 873 (Ch. 1730).

110. *Id.* at 874.

111. 6 JACOB, *supra* note 108, at 333 (emphasis added).

112. DONNISON, *supra* note 90, at 32.

113. 4 BLACKSTONE, *supra* note 66, at *395.

114. DONNISON, *supra* note 90, at 236; *see also* CLARK, *supra* note 91, at 277 (describing a midwife's license).

Midwife, but only such as yu. shall perfectly know to be right honest & discreet women, and also apt and able having sufficient knowledge & experience to use & exercise the said place, function, and office.¹¹⁵

Johnson defines "discreet" as "[p]rudent; circumspect; cautious; sober; not rash; not precipitant; not careless; not hardily adventurous," and as "[m]odest; not forward."¹¹⁶ Clarissa Harlowe paints the character of the "discreet matron" in contrast to that of the "vain and conceited" woman: "[T]he *discreet matron*, who carries *up* (we will not, in such a one's case, say *down*) into advanced life, the ever-amiable character of virtuous prudence, and useful experience, finds solid veneration take place of airy admiration, and more than supply the want of it."¹¹⁷

These definitions remind us that midwives were often depicted as drunken and ignorant or, worse, as bawds.¹¹⁸ In an effort to battle this popular stereotype of the midwife, many of the treatises on midwifery delineated the character of the ideal midwife. For example, in his 1671 treatise *The Speculum Matricis*, James Wolveridge described "what kind of person a Midwife ought to be":

The best Midwife is she that is ingenuous, that knoweth Letters, and having a good memory, is studious, neat and cleanly over the whole body, healthful, strong, and laborious, and well instructed in women's conditions . . . pleasant, quiet, prudent . . . like the Hebrew Midwives, such as fear God . . . that the people may multiply and increase after their hands¹¹⁹

Similarly, in *The Female Physician, containing all the Diseases incident to that Sex . . . To which is added, The Whole Art of New Improv'd Midwifery*, John Maubray opined that the midwife

ought to be a *Woman of a good middle Age, or solid Parts, of full Experience, of a healthy, strong, vigorous Body, with clever small hands . . .* She ought to be *Grave and Considerate*, endued

115. DONNISON, *supra* note 90, at 237.

116. SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (Times Books 1983) (1755) (page numbers unavailable).

117. SAMUEL RICHARDSON, CLARISSA OR THE HISTORY OF A YOUNG LADY 186 (Angus Ross ed., Viking Penguin 1985) (1747-48).

118. See DONNISON, *supra* note 90, at 44-45; Erickson, *supra* note 103, at 85. See generally ERICKSON, *supra* note 98 (examining the portrayal of the midwife in the eighteenth-century novel).

119. Erickson, *supra* note 103, at 78.

with *Resolution* and *Presence of Mind*, in order to foresee and prevent ACCIDENTS; *Sagacious* and *Prudent* in difficult Cases¹²⁰

Consonant with this desideratum of gravity and prudence, England followed the European tradition which "required that [midwives] should be married women of mature age, who had borne children."¹²¹ The midwife training hospitals, or "lying-in" hospitals, established during the eighteenth century were directed by Boards of Governors, but "[t]he day-to-day running of the hospital, and responsibility for normal deliveries lay with the Matron — always a widow."¹²² The hospitals accepted as midwife trainees only married women or widows who were at least twenty-five years of age and of good character.¹²³ Earlier, Mrs. Cellier's *Scheme for the foundation of a Royal Hospital* had provided that only the midwife trainees of the "first rank" be eligible for the position of "Matron, or assistant to the Govenment [sic]" of the hospital.¹²⁴ Likewise, the twelve parish hospitals which Cellier envisioned were to be administered by "twelve Matrons, Assistants to the Corporation of the Midwives."¹²⁵ Thus, the term "Matron" seems to have connoted a woman of superior skill and character, mature both in years and in experience gained through marriage. It is unlikely, therefore, that service on the jury of matrons would have been limited to those officially licensed as midwives.

Most prominently excluded from the jury of matrons was the woman who had never been married.¹²⁶ Although the *femme sole* had legal rights superior to those of the married woman in almost all other respects, the jury of matrons afforded married women a superior opportunity to participate in the legal system. Marriage as a qualification for jury service for women leads us to the question of why the law allowed women to render a verdict solely on the issue of pregnancy when only male jurors were allowed to judge all other issues affecting women.

In James Oldham's view, "courts used the all-female jury for reasons of delicacy, but they primarily viewed the women as experts

120. Erickson, *supra* note 103, at 85 (quoting JOHN MAUBRAY, *THE FEMALE PHYSICIAN* 173 (London, 1724)).

121. DONNISON, *supra* note 90, at 30; see ERICKSON, *supra* note 98, at 6-7.

122. DONNISON, *supra* note 90, at 38.

123. *See id.* at 39.

124. *See* CLARK, *supra* note 91, at 273 n.2.

125. *Id.*

126. Because a widow was a *femme sole*, this class of *femme sole* was eligible for service on the jury of matrons.

on the subject of their inquiry."¹²⁷ The motive of delicacy finds support in the controversy surrounding the introduction of man-midwives. The midwife's license commanded the midwife: "[Y]ou shall be secret, and not open any matter appertaining to yr. office, in ye presence of any man, unless necessity, or very urgent occasion do constrain you so to doe."¹²⁸ Donnison notes that "many women had strong objections to male attendance . . . and were, it is said, prepared to die rather than admit a man to the lying-in room."¹²⁹ Even when a man-midwife was called upon, "out of deference to the woman's modesty, [he] commonly worked blind, with his hands under a sheet."¹³⁰ James Douglas' observations in *A Short Account of the State of Midwifery in London, Westminster, &c.* support the proposition that "for reasons of modesty many women would not agree to send for a man, nor would their husbands allow it."¹³¹ A popular stereotype assumed that women had good grounds for protecting themselves: in much popular literature of the eighteenth-century the man-midwife was attacked as the debaucher of virtuous wives.¹³²

127. Oldham, *supra* note 74, at 171-72.

128. DONNISON, *supra* note 90, at 237.

129. *Id.* at 23.

130. *Id.* at 24.

131. DONNISON, *supra* note 90, at 36 (quoting JAMES DOUGLAS, *A SHORT ACCOUNT OF THE STATE OF MIDWIFERY IN LONDON, WESTMINSTER, &C.* (1736)).

132. See *id.* at 41-42. However, the female modesty which discouraged the use of a male midwife also became an excuse for limiting information available to female midwives. Dr. Hugh Chamberlain, in his *Accomplisht Midwife* (1672), a translation of a French treatise, "omitted the anatomical drawings, 'there being already severall in English; as also here and there a passage that might offend a chaste English eye.'" CLARK, *supra* note 91, at 281. In *The Expert Midwife* (1694), James McMath declares that he has

of purpose omitted a Description of the parts in a woman destined to Generation, not being absolutely necessary to this purpose, and lest it might seem execrable to the more chaste and shamfaced through Baudiness and Impurity of words; and have also endeavoured to keep all Modesty, and a due Reverence to Nature

Id. at 282 (quoting JAMES MCMATH, *THE EXPERT MIDWIFE* (Edinburgh, George Mosman 1694)). McMath also uses delicacy to trivialize the services performed by female midwives in assisting male attendants:

Natural Labour, where all goes right and naturally, is the proper work of the Midwife . . . being only to sit and attend Nature's pace and progress . . . and perform some other things of smaller moment, which Physicians gave Midwives to do as unnecessary & indigent [sic] for them, and for the Matronal chastity .

Id. It is, perhaps, no coincidence that the leading treatise on midwifery by a woman, Mrs. Jane Sharp's *The Midwives Book*, contained an "uninhibited discussion of human sexual anatomy," although she also enjoined her reader "to use as much modesty in the perusal of it, as I have endeavoured to do in the writing of it." Erickson, *supra* note 103, at 79-80 (quoting JANE SHARP, *THE MIDWIVES BOOK* 5 (1671)).

Motives of delicacy, therefore, may well have played a role in the use of the jury of matrons. It seems clear, however, that delicacy was not the only motive for using a jury of matrons. Consonant with Oldham's classification of the jury as an "expert" jury, considerations of knowledge and skill played an important role. The reporter of *Ex parte Aiscough*¹³³ remarks that the Chancellor's order that "two women" examine the widow "at seasonable times" ensured that "people of skill" would determine the issue of pregnancy.¹³⁴

We have only indirect evidence of the actual procedure employed by the jury of matrons to determine pregnancy.¹³⁵ Unlike the ordinary trial jury, who received evidence and announced their verdict publicly, and whose only private act was to deliberate upon a verdict¹³⁶ the jury of matrons received their evidence in private, and acted publicly only in being sworn and in announcing their verdict.¹³⁷ Quoting from a seventeenth-century treatise, *The Office of the Clerk of the Assize*, Oldham notes the oath taken by the jurors when a convicted felon claimed to be pregnant: "You as [matrons] of this Jury shall swear that you shall search and try the Prisoner at the Bar, whether she be quick with Child of a quick Child, and thereof a true Verdict shall return according to the best of your judgment; so help you God."¹³⁸ Relying on the same source, Oldham states that "[a] bailiff would then escort the jury and the prisoner to a chamber where the jury would search and inspect the prisoner"¹³⁹ However, in *Regina v. Baynton*,¹⁴⁰ a case in which the defendant convicted of a felony claimed to be "with child," the clerk swore the jury of matrons as follows: "You the matrons of the jury, shall view and diligently enquire and a true verdict give, according to your evidence, whether Sarah Baynton be with child, quick with child, or not. So help you God."¹⁴¹ Thus, the jury was either to

133. 24 Eng. Rep. 873 (Ch. 1730).

134. *Id.* at 874.

135. Likewise, we have little information about how eligible "matrons" were identified and actually summoned. See CONSTABLE, *supra* note 72, at 112-27 (noting similar lack of data regarding the mixed jury of aliens); see also 1 OLDHAM, *supra* note 53, at 96-97 (noting similar uncertainty and paucity of data regarding special juries, including merchant juries). The report of *Regina v. Baynton*, 14 State Trials 597, 634 (Q.B. 1702) tantalizingly lists the names of the twelve matrons; unfortunately, we have no further information about these women.

136. See 6 JACOB, *supra* note 108, at 301.

137. See *Baynton*, 14 State Trials at 634.

138. Oldham, *supra* note 74, at 171 (quoting THE OFFICE OF THE CLERK OF THE ASSIZE 61 (London 1682) (1660)).

139. *Id.*

140. 14 State Trials 597 (Q.B. 1702).

141. *Id.* at 634.

"search and try" or to "view and enquire" about the fact of pregnancy.

In the cases involving suppositious heirs, it seems that the jury of matrons had a more complex duty. The petitioners in *Willoughby's Case*,¹⁴² *Theaker's Case*,¹⁴³ and *Ex parte Aiscough*¹⁴⁴ all claimed that the writ *de ventre inspiciendo* required not only an examination of the widow by a jury of matrons, but also the confinement and monitoring of the widow by some of the matrons under the supervision of "knights" until her delivery, and the presence of some of the jurors at the actual birth.¹⁴⁵ These cases suggest that the jurors' duties may have differed at each stage of the inquiry. In *Willoughby's Case*,¹⁴⁶ the writ directed the sheriff to "cause the [widow] to be viewed by twelve knights, and searched by twelve women in the presence of the twelve knights."¹⁴⁷ The sheriff reported that he "caused her to be searched," and that she was indeed pregnant.¹⁴⁸ The court then issued another writ ordering the sheriff

safely to keep her in such an house, and that the doors should be well guarded; and that every day he should cause her to be viewed by some of the women named in the writ (wherein ten were named); and when she should be delivered, that some of them should be with her to view her birth, whether it be male or female, to the intent there should not be any falsity.¹⁴⁹

Thus, the jurors initially "searched" the woman to determine her pregnancy, while the knights "viewed" her. The ten matrons thereafter "viewed" her daily and "viewed" the actual birth.

142. 78 Eng. Rep. 811 (C.P. 1597).

143. 79 Eng. Rep. 595 (C.P. 1625).

144. 24 Eng. Rep. 873 (Ch. 1730).

145. The United States Supreme Court recently implied, incorrectly, that this procedure was universally required whenever the jury of matrons was used:

If a woman was subject to capital punishment, or if a widow sought postponement of the disposition of her husband's estate until birth of a child, a writ *de ventre inspiciendo* permitted the use of a jury of matrons to examine the woman to determine whether she was pregnant. But even when a jury of matrons was used, the examination took place in the presence of 12 men, who also composed part of the jury in such cases.

J.E.B. v. Alabama ex rel. T.B., 114 S. Ct. 1419, 1423 n.4 (1994) (citing Note, *Jury Service for Women*, 12 U. FLA. L. REV. 224, 224-25 (1959)). At least one scholar has also perpetuated this error. Grossman, *supra* note 34, at 1133 n.102 (citing R. Justin Miller, *The Woman Juror*, 2 OR. L. REV. 30, 31 (1922)).

146. 78 Eng. Rep. 811 (C.P. 1597).

147. *Id.* at 811.

148. *Id.*

149. *Id.*

A similar distinction was drawn in *Theaker's Case*,¹⁵⁰ in which the sheriff caused the widow "to be searched."¹⁵¹ After reporting that the woman was pregnant, the petitioner asked that the sheriff be ordered to

keep her until she were delivered of her child, that there might not appear to be any false or supposititious birth; and that in the *interim* he should cause her to be viewed every day by certain matrons named by the Court in the writ; and that some of them should be at the birth of the child¹⁵²

The Court agreed, ordering the sheriff "to cause her to be seen every day until her delivery by two at least of the said women returned by him; and that three of them or more should be present with her at her delivery, so as no falshood might be in her birth."¹⁵³ The pregnancy was initially determined by a "search," while the jury monitored the widow's pregnancy by "viewing" her and was simply "present" at the birth.

Finally, in *Ex parte Aiscough*,¹⁵⁴ the petitioners cited a case in which the Master of the Rolls had appointed "two midwives, who should resort to the widow, search her, and see whether she was with child or not, and attend at the birth."¹⁵⁵ Perhaps because the women sent to examine the widow were specified to be "midwives," they were ordered not just to "be present" at the birth, but actually to "attend" at the birth. This prospect convinced the widow that her ruse would be discovered, and she "voluntarily came before the Master, and declared that she was not with child."¹⁵⁶ The petitioners in *Aiscough* sought not only an initial determination of pregnancy, but also that the widow "should be confined and continue until the time of her delivery [at her late husband's seat in Lincolnshire], and that some woman might be always resident with her both before, and at the birth."¹⁵⁷ The Chancellor postponed impanelling the jury of matrons, ordering instead that the petitioners "may send two women at seasonable times, to see whether she is with child."¹⁵⁸ In this case, the women were not specifically

150. 79 Eng. Rep. 595 (C.P. 1625).

151. *Id.*

152. *Id.*

153. *Id.*

154. 24 Eng. Rep. 873 (Ch. 1730).

155. *Id.* at 874.

156. *Id.*

157. *Id.*

158. *Id.*

ordered to "search" the widow; however, the link between "search" and "see" in the Master of the Rolls case may indicate that the Chancellor in *Aiscough* contemplated that the widow would be "searched."

The verbs used in the oath in the *Baynton* case — "view" and "enquire" — imply both seeing and hearing. In Johnson's *Dictionary*, to "view" is "[t]o survey; to look on by way of examination" and "[t]o see; to perceive by the eye."¹⁵⁹ However, the noun "view" was a legal term of art; in Jacob's words, "The View was for the jury to see the land or thing claimed, and in controversy."¹⁶⁰ The visual connotations of "view" are complemented by the aural connotation of "enquire." Johnson defines "inquire" as "[t]o ask questions; to make search; to exert curiosity on any occasion" and as "[t]o make examination."¹⁶¹ Johnson defines the noun "inquirer" as "[s]earcher; examiner; one curious and inquisitive" and as "[o]ne who interrogates; one who questions."¹⁶²

Johnson's use of the word "search" to help define "inquire" suggests that the jury's search of the pregnant woman might be nothing more than an interrogation.¹⁶³ There is some evidence, however, that to "search" and to "try" involved more than just asking questions. Jacob notes a case in which the sheriff of London accompanied a jury of matrons to "a Lady's house, and into her chamber."¹⁶⁴ According to Jacob, these women had been sworn "to search, try and speak the truth whether she was with Child or not."¹⁶⁵ Jacob reports that "[t]he men all went out, and the women searched the Lady, and gave their verdict that she was with Child."¹⁶⁶ The necessity for the men's leaving the room suggests that "searching" the woman to determine pregnancy involved more than just a verbal interrogation.

Johnson defines "search," first, as "[t]o examine; to try; to explore; to look through"; second, as "[t]o inquire; to seek"; and third, as "[t]o probe as a chirurgion."¹⁶⁷ The possibility that the jury of matrons conducted the sort of physical operation connoted

159. JOHNSON, *supra* note 116.

160. 6 JACOB, *supra* note 108, at 351.

161. JOHNSON, *supra* note 116.

162. *Id.*

163. See Minow, *supra* note 88, at 1205 (referring to "some delicacy of feeling about whose ears should hear such intimate female matters").

164. 6 JACOB, *supra* note 108, at 334.

165. *Id.*

166. *Id.*

167. JOHNSON, *supra* note 116.

by this third definition finds support in *Ex parte Aiscough*,¹⁶⁸ in which counsel for the sixteen-year-old widow argued that "it would be an hardship on a lady of so tender years to send a jury of matrons to inspect her; and she being now with child, might be of dangerous consequence, and occasion a miscarriage"¹⁶⁹ This claim that an "inspection" by the jury might cause a miscarriage not only suggests that a physical examination of the widow was contemplated but also raises the specter of the stereotypically rough, clumsy, and ignorant midwife.¹⁷⁰

Jacob does not define "search" but defines "searcher" as "[a]n officer of the customs, whose business it is to search and examine ships outward-bound, if they have any prohibited or uncustomed good on board, &c."¹⁷¹ The image of the customs officer roaming the ship, entering each compartment in search of contraband, correlates nicely with the image of the jury of matrons, probing the widow's body in search, not of contraband, but of a legitimate heir. Also suggestive in this regard is Johnson's second definition of "searcher": "Officer in London appointed to examine the bodies of the dead, and report the cause of death."¹⁷² As authority for this definition, Johnson quotes from *Graunt's Bills of Mortality*: "The *searchers*, who are ancient matrons sworn to their office, repair to the place where the dead corps lies, and by view of the same, and other inquiries, examine by what disease the corps died."¹⁷³ In the civic and legal realms, it seems, women were given authority only over bodies, dead or pregnant.

Thus, the jury of matrons institutionalized the association in Western culture between women and bodies. The association between women and the body dates back at least to classical Greece: "The early Greeks saw women's capacity to conceive as connecting them with the fertility of Nature."¹⁷⁴ While women were associated with nature, procreation, and the body, men were associated with their opposite, or in Francis Bacon's view, their conqueror, the rational mind.¹⁷⁵ As Sherry B. Ortner points out, Western culture has also viewed women as mediators between the

168. 24 Eng. Rep. 873 (Ch. 1730).

169. *Id.* at 874.

170. See DONNISON, *supra* note 90, at 45; Erickson, *supra* note 103, at 74-75.

171. 6 JACOB, *supra* note 108, at 37.

172. JOHNSON, *supra* note 116.

173. *Id.*

174. GENEVIEVE LLOYD, *THE MAN OF REASON: "MALE" AND "FEMALE" IN WESTERN PHILOSOPHY* 2 (1984).

175. See *id.* at 10-17.

realm of nature and the male realm of culture.¹⁷⁶ Conceptually, therefore, the jury of matrons can be seen as mediators between the ultimate symbol of male transcendence, the courtroom, and the ultimate symbol of female bondage to nature, pregnancy.¹⁷⁷ When the issue of a woman's pregnancy becomes legally relevant and a pregnant female body literally intrudes into the transcendent space of the English courtroom, the law must employ females, acting in their role as mediators between nature and culture, to examine and adjudge the intruder.

In their role as mediators, the matrons are accepted by the law, but still suspected of complicity in feminine subversion of the male order. In Oldham's view, this suspicion was justified in capital cases by the spurious claims of pregnancy frequently made by female prisoners.¹⁷⁸ Of course, the very existence of the writ *de ventre inspiciendo* presupposed the widow's duplicity. Jacob states that the writ is available "[w]here a Widow is suspected to feign herself with Child, in order to produce a supposititious heir to the estate."¹⁷⁹ In *Ex parte Aiscough*,¹⁸⁰ the Chancellor declared that the writ "is for the security of the next . . . heir, to guard him or her against fraudulent or supposititious births."¹⁸¹ This suspicion of the widow is also exemplified in *Willoughby's Case*,¹⁸² where the court ordered that the sheriff keep the widow in a "well guarded" house and cause her to be "viewed" by some of the matrons "everyday."¹⁸³ Likewise, in *Theaker's Case*,¹⁸⁴ the court ordered the widow to be "seen every day until her delivery by two at least" of the matrons.¹⁸⁵

The courts' actions in these cases demonstrate not only suspicion of the widow, but also suspicion of the matrons. In each of the cases, the court ordered that more than one woman view the widow periodically and that more than one attend at the actual

176. Sherry B. Ortner, *Is Female to Male as Nature Is to Culture?*, in *WOMEN, CULTURE, AND SOCIETY* 67, 84-85 (Michelle Zimbalist Rosaldo & Louise Lamphere eds., 1974).

177. *See id.* at 73-76, 84-85.

178. *See* Oldham, *supra* note 74, at 171 n.190. In support of this point, Oldham cites a passage from *Moll Flanders*: "[W]hen Moll was herself imprisoned in Newgate, a fellow prisoner explained that she was not under immediate threat of execution because 'I pleaded my belly, but I am no more quick with child than the judge that tried me, and I expect to be called down next session.'" *Id.* (quoting DANIEL DEFOE, *THE FORTUNES AND MISFORTUNES OF THE FAMOUS MOLL FLANDERS* 262 (Modern Library ed. 1950) (1722)).

179. 6 JACOB, *supra* note 108, at 333.

180. 24 Eng. Rep. 873 (Ch. 1730).

181. *Id.* at 874.

182. 78 Eng. Rep. 811 (C.P. 1597).

183. *Id.* at 811.

184. 79 Eng. Rep. 595 (C.P. 1625).

185. *Id.* at 595.

birth.¹⁸⁶ The implicit fear of a female conspiracy to pass an illegitimate child off as legitimate derives, of course, from the woman's role as the conduit for property. As Johnson stated, "the chastity of women [is] of the utmost importance, as all property depends upon it"¹⁸⁷ Thus, the jury of matrons was a necessary evil for determining the widow's pregnancy, but given the high stakes, the law took steps to ensure that transcendent legal rules of inheritance would not be disrupted by the activities of either the widow or the matrons.

Our examination of the jury of matrons has revealed two pervasive themes: the relegation of women's judgment to issues surrounding other women's bodies, and uncertainty about whether women were allowed even this limited power in the English courtroom because of their expertise or because of their modesty. In a little-noted reference to women's exclusion from the jury, a popular eighteenth-century writer, Richard Steele, rehearses the same issues. In a 1709 issue of *The Tatler*,¹⁸⁸ Steele addresses a reader's complaint about "crowds of women" gathering at the Old Bailey to hear rape trials: "I can't tell," Steele writes, "who are so much concern'd in that Part of the Law as that [female] Sex . . . , they being the only Persons liable to such Insults."¹⁸⁹ He goes further, however, noting women's exclusion from serving on criminal juries and proposing that they be permitted to serve in rape cases:

The Law to me indeed seems a little defective in this Point; and it is a very great Hardship, that this Crime, which is committed by Men only, should have Men only on their Jury. I humbly therefore propose, That on future Trials of this Sort, half of the Twelve may be Women; and those such whose Faces are well known to have taken Notes, or may be suppos'd to remember what happen'd in former Trials in the same Place.¹⁹⁰

186. See *id.* (stating that the widow should be seen "every day" by "two at least" of the matrons, with "three of them or more" to be present at the birth); *Willoughby's Case*, 78 Eng. Rep. at 811 ("some of the women" should view her and be present at the birth); *Ex parte Aiscough*, 24 Eng. Rep. at 874 (requiring "two women" to visit the widow "at seasonable times").

187. JAMES BOSWELL, *THE LIFE OF JOHNSON* 702 (R.W. Chapman ed., The World's Classics 1980) (1791).

188. RICHARD STEELE, *THE TATLER* NO. 84 (Oct. 22, 1709), reprinted in 2 *THE TATLER* 32 (Donald F. Bond ed., 1987).

189. *Id.* at 32.

190. *Id.*

Obviously, Steele is drawing upon the concept of the mixed alien jury. In doing so, he alludes to both the issue of expertise and the issue of interest. To insure the jury's expertise, he proposes "the learned *Androgyne*" as a "good Fore-woman of the Pannel" because she "(by long Attendance) understands as much Law and Anatomy as is necessary" in rape cases.¹⁹¹ With respect to the community of interest between the female jurors and the victim of the crime, Steele insists that until such mixed juries are instituted, women should forgo their right to view rape trials, "For to what End can it be that they should be present at such Examinations, when they can only be perplex'd with a Fellow-feeling for the Injur'd, without any Power to avenge their Sufferings."¹⁹²

If Steele is serious here, he is making a radical suggestion, the expansion of women's jury service to include a certain class of criminal cases. But a thorough consideration of Steele's article reveals an unmistakable satiric tone that undermines the sincerity of his proposal. The first hint of satire comes in Steele's defense of women's attendance at rape trials:

Nor indeed do I think it more unreasonable that they should be inquisitive on such Occasions, than Men of Honour when one is try'd for killing another in a Duel. It is very natural to enquire how the fatal Pass was made, that we may the better defend our selves when we come to be attack'd.¹⁹³

By equating a rape and a duel, especially in deploying the double entendre of "fatal Pass" (the thrusting sword/phallus proving fatal to the opponent's life/honor), Steele casts a satiric shade upon his otherwise apparently serious suggestion that women of honor could learn how to protect themselves from rape by learning how other rapes were accomplished. For one thing, a man of honour would not have "come to be attack'd" in a duel; he would have agreed with his opponent to engage. This element of mutuality, along with the vision of a duel as formal, ritualized swordplay (sex-play), makes the duel a troublingly inapposite figure for rape. The overall effect of this passage is the slightly salacious suggestion that women who wish to view rape trials do so from a prurient interest in an event that constitutes a ritualized, mutually agreed-upon encounter. By deprecating the seriousness of the crime of rape, Steele inevitably undermines the seriousness of his proposal for a female mixed jury.

191. *Id.* at 32-33.

192. *Id.* at 33.

193. *Id.* at 32.

As the article continues, Steele also deprecates the intellectual capacity of women. He notes that "[s]everal eminent Ladies appear'd lately at the Court of Justice" at a rape trial and "with great Patience and Attention stay'd the whole Trials of two Persons."¹⁹⁴ Steele's emphasis on the "whole" trials and the viewers' "great Patience and Attention" (one can surely hear the arch emphasis that seems called for by the words "great" and "whole") suggests that such patience and attention on the part of women is unusual and, therefore, noteworthy. The implicit stereotype of the flighty female appears again in the article. After mentioning the "unnecessary Pain which the Fair Ones give themselves" by exercising their "Fellow-feeling for the Injur'd, without any Power to avenge their Sufferings," Steele recites: "I have known a young Woman shriek out at some Parts of the Evidence; and have frequently observ'd, That when the Proof very grew particular and strong, there has been such an universal Flutter of Fans, that one would think the whole Female Audience were falling into Fits."¹⁹⁵ Here we have the eighteenth-century adumbration of the 1919 Parliament's fear that the evidence in certain types of cases would prove unsuitable for female jurors' ears. Steele depicts the intellectual delicacy of women as manifest in physical excess. If women are apt to shriek at evidence in rape trials, they can hardly be fit to sit in judgment at those trials. Steele's next image, so strikingly highlighted by the proliferation of alliterative "f" sounds (and surely Steele's choice of consonant is not without significance) — the fluttering fans of the females falling into fits — likewise impugns the fitness of women for jury service. Steele mocks the suggestion that women have any proper role in judicial decisionmaking by emphasizing that quintessentially female accessory, the fan. The suggestion of coyness turns to lasciviousness as, first, blushes and giggles are hidden behind fans, which then must be used (when the proof turns "particular and strong," adjectives resonating with phallic significance) to disperse the heat generated in the women by the spectacle; and, finally, the state of incoherence and irrationality signified by "Fits." From one susceptible female actually observed shrieking out at the evidence, Steele moves to a "universal" phenomenon affecting the "whole" female audience such that "one would think" they had "fall[en] into Fits." From the actual behavior of a single female, Steele moves to

194. *Id.*195. *Id.* at 33.

the posited behavior of an entire female population. All of these moves call into question women's fitness for jury service.

But again we are left with the question of *why* women are unfit for jury service. Although, like other eighteenth-century writers, Steele refuses to be perfectly explicit, he hints that jury service requires a degree of knowledge and intellectual capacity that women are simply incapable of achieving (at least, without becoming the stereotypical "unsex'd female").¹⁹⁶ By naming the proposed "Fore-woman" of his mixed jury "Androgyne," Steele, like other writers of the seventeenth and early eighteenth centuries,¹⁹⁷ clearly suggests that jury service requires a woman to take on male characteristics. The fact that she is qualified as "Fore-woman" by "long attendance" suggests both an unbecoming interest in unsavory cases and a concomitant neglect of more fitting duties in other settings.¹⁹⁸ In the article's final peroration, Steele makes explicit the gendered construction of intellect and implicitly links learning with the loss of that modesty so prized in respectable women:

In short, I must tell my Female Readers, and they may take an old Man's word for it, That there is nothing in Women so graceful and becoming as Modesty: It adds Charms to their Beauty, and gives a new Softness to their Sex. Without it, Simplicity and Innocence appear rude, Reading and good Sense masculine, Wit and Humour lascivious.¹⁹⁹

From Steele's satirical treatment of the female mixed jury, we begin to perceive a more complex relationship between the issues of women's intellect, their capacity for judging, their delicacy, and their expertise in female bodily processes. We can continue to explore the interrelationship among these issues by turning our attention to another popular eighteenth-century literary work, Charlotte Lennox's 1752 novel, *The Female Quixote*. In this work, we discover a sustained but subtle critique of stereotypes of women, like Steele's, that figure them as intellectually inferior and ineligible for education.

196. See NUSSBAUM, *supra* note 43, at 43.

197. See *id.* at 43-56.

198. Interestingly, seventy-five years later, in an adumbration of the separate spheres theory, the Duchess of Devonshire was ridiculed in cartoons showing her out campaigning while her husband, the Duke, diapered the baby. See COLLEY, *supra* note 54, at 245.

199. STEELE, *supra* note 188, at 33 (footnote omitted).

III. THE FEMALE QUIXOTE

The good Doctor was extremely surpriz'd at this Discourse: He was beginning to think her again delirious; but *Arabella* added to this Account such sensible Reasoning . . . that the Doctor left her in strange Embarrassment, not knowing how to account for a Mind at once so enlighten'd, and so ridiculous.²⁰⁰

Charlotte Lennox's 1752 novel, *The Female Quixote*, tells the story of seventeen-year-old Arabella, the beautiful, virtuous, and intelligent daughter of the Marquis. Her mother's early death, her father's retirement from the royal court, and her upbringing in the seclusion of the countryside lead Arabella to rely for companionship on books, primarily the chivalric romances of La Calprenède and Madame de Scudéry. These romances generally focus on the outlandish vicissitudes of the love affairs between strong, bellicose heroes and beautiful, virtuous (and, often, politically powerful) heroines. Arabella does not recognize the romances as fictions but instead reads them as true histories. She interprets her own experiences in light of the romances, seeing herself as a heroine and those around her as romance characters: the gardener, a disguised prince; a London woman who has come into the country to give birth, an incognito princess; and a gentlemanly visitor to the neighborhood, a ravisher. Once Arabella is introduced to the suitor whom her father has chosen, her cousin Glanville, Arabella's interpretations impinge more urgently on reality as she enforces from Glanville the behavior appropriate to a hero of romance. As she moves into the world, travelling to Bath and London with Glanville, his father, Sir Charles, and his sister, Charlotte, her romantic interpretations of other people's behavior begin to affect her reputation. Finally, when she nearly drowns after throwing herself into the Thames to escape several male horsemen whom she perceives as ravishers, Arabella is persuaded by a clergyman to relinquish her belief in the truth of the romances. The novel ends with her companionate marriage to Glanville.

At the heart of the novel lies a tension, an ambivalence, an incommensurability. Like its forebear, *Don Quixote*, the novel certainly satirizes the extravagant romances of the sixteenth and seventeenth centuries, yet it just as certainly critiques the reality that is juxtaposed to the romance world. In this way, Ronald Paulson suggests, Lennox's novel shares the central paradox of the

200. CHARLOTTE LENNOX, *THE FEMALE QUIXOTE OR THE ADVENTURES OF ARABELLA* 367 (Margaret Dalziel ed., 1989) (1752).

genre: "*Don Quixote* becomes both an attack on a false ideal which, if practiced, would lead men to attack innocent folk with lances, and an attack on the real world in which the true ideal is unattainable."²⁰¹ That is, according to Paulson, "the illusion and the reality become satiric comments on each other."²⁰²

But the protagonist of Lennox's novel is not just a quixote — she is a *female* quixote, and the gendered nature of the novel has intrigued critics who seek to identify the peculiar satiric comment the novel makes. Critics of the novel consistently note the marked ambivalence with which Lennox depicts her heroine, Arabella. Paulson remarks that "Arabella contains both aspects of the Quixote syndrome, vice and corrective."²⁰³ Judith Sloman asserts, "While seeming to say that Arabella is ridiculous, [Lennox] shows time and time again that Arabella is morally and intellectually superior to most of the people around her."²⁰⁴ In Deborah Ross' words, "Apart from her delusions — or, rather, along with them — she also has wit and intelligence."²⁰⁵ According to Laurie Langbauer, the tension in the novel corresponds to a fundamental division in Arabella's identity: "Crucial to the book's depiction of her, and its derision of romance, is its assertion of a natural, sensible Arabella, superior to and distinct from her romantic self."²⁰⁶

Langbauer's reference to Arabella's "romantic self" indicates the degree to which character and genre are paralleled in criticism of *The Female Quixote*. The link is explicitly made by Langbauer: "*The Female Quixote* both mocks and lauds its heroine's quixotism, and the way it ridicules romance actually exposes the attraction of that form."²⁰⁷ These critics agree that the element of social critique that destabilizes the satire resides in the alternative world of romances, the world the novel also satirizes. The qualities that make romance attractive to Arabella are the qualities missing from eighteenth-century women's lives. Langbauer emphasizes the escapist potential of romance: "No matter how much the novel

201. RONALD PAULSON, *SATIRE AND THE NOVEL IN EIGHTEENTH-CENTURY ENGLAND* 31 (1967).

202. *Id.* at 33.

203. *Id.* at 275.

204. Judith Sloman, *The Female Quixote as an Eighteenth Century Character Type*, 4 *TRANSACTIONS OF THE SAMUEL JOHNSON SOCIETY OF THE NORTHWEST* 86, 94 (1972).

205. DEBORAH ROSS, *THE EXCELLENCE OF FALSEHOOD: ROMANCE, REALISM, AND WOMEN'S CONTRIBUTION TO THE NOVEL* 109 (1991).

206. Laurie Langbauer, *Romance Revised: Charlotte Lennox's The Female Quixote*, 18 *NOVEL* 29, 32 (1984).

207. *Id.* at 30.

travesties romance, it also presents romance as what gets Arabella out of the boredom and seclusion of her father's house, and when she abandons romance at the conventionally happy ending, she is trapped again, into marriage and submission."²⁰⁸ Patricia Meyer Spacks is more explicit about the particular aspect of society critiqued by the novel: "Like Don Quixote's yearning for a different world, Arabella's wish to live by the rules of romance criticizes the standards of her society especially as they restrict female possibility."²⁰⁹ According to Spacks, the novel acknowledges eighteenth-century women's "psychic need for alternatives to a socially defined state of meaningless and powerless activity."²¹⁰ The alternative presented by romance is "a world in which [a young woman] can claim enormous significance and power,"²¹¹ specifically, power in "the public sphere."²¹²

Thus, in *The Female Quixote*, Lennox satirizes the world of romances as silly and extravagant while critiquing contemporary society by promoting romance as a world in which women can find community, meaningful activity, and public roles. Her ability to satirize romances as unreliable models while promoting them as alternative world-views depends upon the subtle distinctions made throughout the novel among the various aspects of the romances — on the one hand, their improbable plots, their extravagant language, their stereotypical characterizations, and on the other, their depiction of women as wielding power not only over their unhappy suitors but also over nations and armies.

Similar subtle distinctions come into play in Lennox's treatment of Arabella's character, aspects of which are both lauded and satirized. As Deborah Ross points out, "A reader seeking wisdom from *The Female Quixote* would often be unsure whether to view Arabella as a model or as a warning."²¹³ While critics have had no difficulty identifying the "vice" Arabella embodies — an unrealistic and hazardous world-view — they have been slower to suggest what "corrective" she represents. Critics have found in Arabella no analogue to Don Quixote's idealism; they have failed to identify a correlative to her folly that is sufficiently compelling to account for

208. *Id.* at 44.

209. Patricia Meyer Spacks, *The Subtle Sophistry of Desire: Dr. Johnson and The Female Quixote*, 85 MOD. PHILOLOGY 532, 533 (1988).

210. *Id.*

211. *Id.* at 535.

212. *Id.* at 541.

213. Deborah Ross, *Mirror, Mirror: The Didactic Dilemma of The Female Quixote*, 27 STUD. IN ENG. LITERATURE 455, 466 (1987).

what Spacks calls "the poignance of her characterization"²¹⁴ and what Ross claims as "Lennox's real sympathy for Arabella."²¹⁵ If we are to see *The Female Quixote* as a complete example of quixotean satire, we must discover this missing term in the equation. We must find in Arabella a positive quality that exists simultaneously with her folly, that correlates with the positive attributes of the romance world, and that constitutes a desideratum which critiques eighteenth-century English society.

The most obvious corrective to what critics sometimes call Arabella's "madness"²¹⁶ is her conversion and inevitable companionate marriage to Glanville. But if Arabella the compliant young matron constitutes the corrective to Arabella the ridiculous misreader of romances, then the satire does not reside in Lennox's portrayal of her heroine in the same way that it resides in her depiction of romance. In this reading, the novel becomes a sort of bildungsroman, "in which a character progresses from a mistaken adherence to illusions to a realistic and happy acceptance of life."²¹⁷ But, as Paulson notes, the "Quixote syndrome, when it appears whole, involves a partial recantation. It says that Quixote is totally wrong, that he is mad and the world is real; and yet in a sense he is right and the world is unreal or at least wicked and unimportant."²¹⁸ If the "corrective" represented by Arabella is her conversion and marriage, there is merely movement from vice to corrective, not the simultaneous critique and celebration required for quixotic satire.

Critics like Laurie Langbauer, who link the portrayal of Arabella with the genre of romance, view her growth as an implicit critique of the romance form: "The novel . . . associates the dangers of romance with sins of women, and through this association clinches its derision of the form. . . . Lennox accepts the derision of romance; her strategy is to separate Arabella from it, to educate her out of romance and dissociate her from its realm."²¹⁹ Still, in Langbauer's view, Arabella remains aligned with romance until the end; thus, the end of her story signals Lennox's disillusionment with romance as a liberating possibility for women: "[T]he novel ultimately shows that women and romance are so bound that

214. Spacks, *supra* note 209, at 533.

215. Ross, *supra* note 213, at 461.

216. *E.g.*, James J. Lynch, *Romance and Realism in Charlotte Lennox's The Female Quixote*, 14 *ESSAYS IN LITERATURE* 51, 61 (1987).

217. Elaine M. Kauvar, *Jane Austen and The Female Quixote*, 2 *STUD. NOVEL* 211, 214 (1970).

218. PAULSON, *supra* note 201, at 33.

219. Langbauer, *supra* note 206, at 39, 41.

separating the two ends the story. It suggests a positive, although wistful, alignment of them — if romance were available to women unmediated, it might be a source of power, and a ground from which they could speak.”²²⁰ Elizabeth Kraft goes further, so firmly linking Arabella with the romance form that in her view, Arabella’s trajectory from quixote to matron indicates the impossibility of a female protagonist’s sustaining a quixotic satire: “There is no possibility of a feminine version of the story of *Don Quixote*; there is only the alternative of another masculine tale — the sentimental tale of feminine values, appropriated and thereby permanently altered by the masculine, just as any dominant culture absorbs and fundamentally changes weaker, alien elements.”²²¹

For these critics, the end of the novel criticizes contemporary society for denying to women the “pleasures of the irrational, mocked in the novel as romantic foolery.”²²² Yet reading *The Female Quixote* as a generic story in which the novel (masculine reality) defeats the romance (feminine irrationality) fails to account sufficiently for the positive elements in Lennox’s depiction of Arabella. (Also, as we shall see, this reading derives from an ahistorical understanding of the relationship between women and romance invoked by the novel). Indeed, Langbauer herself sees the “natural, sensible Arabella” as “superior to . . . her romantic self,” and critics have generally acknowledged that the primary source of the sympathy with which Arabella is portrayed is her intellect. For example, Katharine Rogers notes, “Arabella’s conspicuous superiority suggests that she is not merely an addict of silly fiction, but a woman of intellect capable of rising above conventional limitations, whether frivolous or humdrum.”²²³

But even while acknowledging Arabella’s intellect, critics have been slow to suggest an association between Arabella’s intellectual powers and the corrective she represents. Leland Warren asserts, “[I]t is Arabella’s non-romantic speeches that Lennox expects us to see as proof of her character’s superior merit. But these Johnsonian speeches that so impress her hearers have little to do with Arabella herself.”²²⁴ Langbauer also dismisses the possibility that Arabella’s intellect represents an alternative to her folly:

220. *Id.* at 31.

221. ELIZABETH KRAFT, CHARACTER & CONSCIOUSNESS IN EIGHTEENTH-CENTURY COMIC FICTION 98 (1992).

222. Langbauer, *supra* note 206, at 35.

223. KATHARINE M. ROGERS, FEMINISM IN EIGHTEENTH-CENTURY ENGLAND 110 (1982).

224. Leland E. Warren, *Of the Conversation of Women: The Female Quixote and the Dream of Perfection*, 11 *STUD. EIGHTEENTH-CENTURY CULTURE* 367, 374 (1982).

[W]e get very little of Arabella's conversation that is not romantic, and the little we do get shows an Arabella no more "real" because less literary than the self drawn from romance. The speeches which are to impress us are, if anything, even more artificial — set-pieces modelled on historical writers or moral essays.²²⁵

Because these critics see Arabella's Johnsonian speeches as the only evidence of her intellectual powers, they find her intellect too weakly depicted in the text to serve as the corrective to her romantic folly.

But the same quality in Arabella that is satirized is also celebrated: her readiness to interpret reality in light of romance precedents. As Ronald Paulson notes, the novel focuses "on the heroine's mind and the way it operates."²²⁶ Just as Lennox's satire of the romances requires subtle distinctions between their positive and negative attributes, so does the satire of Arabella depend upon a subtle distinction between the positive and negative qualities of her intellect. Although her insistence on enforcing romantic behavior on herself and everyone around her is condemned as dangerous, her interpretive powers are depicted with approval. It is her premises, not her processes, that the novel subjects to ridicule. Her mind, in the Doctor's words, is both "enlighten'd" and "ridiculous," enlightened in its powers, ridiculous in its results.²²⁷ The disparity between the world of romance and the real world corresponds to an incommensurability between Arabella's inner world and the reality of eighteenth-century England: her powers exceed her possibilities. Although the novel shows her intellect as equal to any man's, the novel just as clearly shows that the realm available for the exercise of that intellect is limited. The quixotean satire of Arabella resides in this tension between processes and premises, powers and possibilities.

In D.A. Miller's terms, the "disequilibrium" that renders Arabella herself "narratable"²²⁸ is this disparity between her acute mental powers and the restricted scope that society permits for the exercise of those powers. Judith Dorn Depuydt has characterized this disequilibrium as the "conflict in a woman's relation to her

225. Langbauer, *supra* note 206, at 33.

226. PAULSON, *supra* note 201, at 277.

227. See LENNOX, *supra* note 200, at 367.

228. D.A. MILLER, NARRATIVE AND ITS DISCONTENTS: PROBLEMS OF CLOSURE IN THE TRADITIONAL NOVEL 109 (1981).

community's assumptions about the forms of interpretation that make common sense."²²⁹ Like Paulson, who sees the novel as posing "an epistemological problem,"²³⁰ Depuydt correctly emphasizes the role of conflicting epistemologies in the novel. Depuydt, however, correctly sees in Lennox's portrayal of Arabella's subjectivity an emphasis, not so much on her idiosyncrasy, but rather on her representativeness. As Laurie Langbauer puts it, "the strength of *The Female Quixote* is that it tells us something not just about romance or Arabella, but about all women."²³¹ Langbauer's statement should be qualified, however: *The Female Quixote* tells us something, not about "all women" in the material historical sense, but about "Woman" in the conceptual sense, as conventionally represented in eighteenth-century discourse. The paradox noted by the good Doctor in the epigraph to this section describes not just the mind of Arabella, but the way in which the mind of Woman was figured in the mid-eighteenth century. The fissure opened up by these two incongruent qualities of mind — the enlightened and the ridiculous — opens up a space in which a young woman's encounters with reality can be narrated; and in Arabella's encounters with reality, the novel engages the issue of how, or whether, the post-Cartesian woman could be accommodated in eighteenth-century English society.

Previous critics of *The Female Quixote* have been too inattentive to history; they have been too complacent, merely noting the limitations on women's legal and social position in eighteenth-century England without thoroughly analyzing the ways in which women's subordination was figured and the terms in which it was debated in the years before the novel was published. It is impossible to understand Lennox's portrayal of Arabella without an examination of the historical context in which this portrayal is grounded. Deborah Ross has identified "a dominant trait of the women's novel of the mid-eighteenth century" as "a pragmatic didacticism . . . in which what *is* clearly but inevitably differs from what *should be*."²³² This gap between the real and the ideal also underlies satire.²³³ Whether *The Female Quixote* is seen as a mid-eighteenth-century "woman's novel" or as a satire, we are faced

229. Judith Dorn Depuydt, *Material Contentions: Women and Intellectual Community in Later Eighteenth-Century English Narrative* 72 (1992) (dissertation, Yale University).

230. *Id.* at 31.

231. Langbauer, *supra* note 206, at 40.

232. Ross, *supra* note 213, at 464-65.

233. See PAULSON, *supra* note 201, at 15.

with what Jerome McGann calls the "question of referentiality."²³⁴ The gap between real and ideal forces us to undertake a historical inquiry: What was the reality at the time the novel was published?²³⁵ What might have been seen as the competing ideal to that reality, and why?

In constructing her heroine, Lennox drew heavily upon a non-fictional discourse of female subjectivity associated with Mary Astell (1668-1731), her colleagues Sarah Fyge Egerton (1670-1723) and Judith Drake (fl. 1696), and her successors. In depicting the conflicting impulses of Arabella's mentality, Lennox pervasively employs a dichotomy between Custom and Reason, terms that explicitly refer to Mary Astell's formulation of the anomalous position of post-Cartesian women in early modern England. Astell, as well as her contemporaries and her successors, hoped to benefit from the egalitarian implications of Descartes' disembodiment of Reason; however, in arguing for women's intellectual equality, these writers struggled to overcome the inertia of Custom, which they identified as the source of women's social and legal subordination.

Thematically, Lennox's depiction of Arabella engages, in Depuydt's words, "contemporary epistemological concern with the construction of common realities."²³⁶ In addition, Depuydt asserts, the narrative is conditioned upon the fact that contemporary society "customarily differentiates [women] from the community of reasonable men."²³⁷ This differentiation existed most powerfully in the legal system, in the near-total exclusion of women from participation in the paradigmatic "community of reasonable men" whose sole purpose was the "construction of common realities" — the jury.

It is to this point that the novel implicates the sociohistorical reality of the exclusion of women from juries. Like a juror, Arabella tries to apply the laws that she recognizes as authoritative to the facts of a given situation as she perceives them. Her interpretations, however, carry no authority. Arabella is, in essence, disqualified from serving on the jury of her own life. The meaning of events in her life is, instead, determined by the "community of reasonable men" that surrounds her. Because Arabella wants to do in her own

234. Jerome J. McGann, *Introduction to HISTORICAL STUDIES AND LITERARY CRITICISM* 3, 3 (Jerome J. McGann ed., 1985).

235. I recognize, of course, that we can never recreate the reality, or the multiple realities, of any past time. I am really asking what representations of women, and specifically women as intellectual beings, were available to Lennox and how she invoked those models.

236. Depuydt, *supra* note 229, at 17.

237. *Id.* at 26.

life what English jurors were asked to do in a trial, understanding the cultural resonance of Arabella's loss of the privilege of judging will shed light on the cultural meaning of the exclusion of women from all juries other than the jury of matrons. If English law had entirely excluded women from jury service, we could argue that Lennox was challenging this limitation on women's role by showing that Arabella, if properly instructed on the applicable law, could energetically apply that law to the facts. However, the existence of the jury of matrons confounds any simplistic argument. The jury of matrons inscribed within the legal system the preeminent convention of the construction of women's subjectivity in the eighteenth century: their association with the Body, rather than the Mind. We also find this dichotomy between Mind and Body in the themes and language of the novel.

Throughout the novel, Lennox foregrounds the issue of Arabella's authority to interpret reality. In Ronald Paulson's words, the novel focuses consistently "on the heroine's mind and the way it operates."²³⁸ Both early and late in the novel we are told that Arabella has "a most happy Facility in accommodating every Incident to her own Wishes and Conceptions"²³⁹ and "a strange Facility in reconciling every Incident to her own fantastick Ideas."²⁴⁰ The novel depicts Arabella as an eager interpreter of people and things around her. She has confidence in her interpretive powers; she constantly interrupts the other characters because she is certain that she knows what they will say. As Paulson notes, "her favorite word is 'questionless.'"²⁴¹ Despite the other characters' impatience with her "Foibles,"²⁴² Arabella's moments of greatest dignity are frequently those in which she confidently enforces even her most unrealistic interpretations. For example, in contrast to the other characters, only Arabella can deal calmly with Selvin's denial that he intended to declare his love for her:

So formal a Denial . . . extremely perplex'd Sir *Charles*, and fill'd Mr. *Glanville* with inconceivable Shame —

Miss *Glanville* enjoy'd their Disturbance, and full of an ill-natur'd Triumph, endeavour'd to look *Arabella* into Confusion: But that Lady not being at all discompos'd by this Declaration of Mr. *Selvin's*, having accounted for it already, replied with great Calmness,

238. PAULSON, *supra* note 201, at 277.

239. LENNOX, *supra* note 200, at 25.

240. *Id.* at 340.

241. PAULSON, *supra* note 201, at 276.

242. See, e.g., LENNOX, *supra* note 200, at 54.

Sir, 'Tis easy to see thro' the Artifice of your disclaiming
any Passion for me²⁴³

Arabella's power to "account for" Selvin's behavior enables her to maintain her dignity and to thwart Charlotte's hateful attempt to sabotage her composure.

Despite her fondness for "questionless" conclusions, however, Arabella is always willing to revise her interpretations if they prove wrong. A pattern that pervades the novel is Arabella's reaching a tentative conclusion, having that conclusion challenged, and then revising her conclusion to accommodate the challenge. For example, Arabella believes that Hervey "would entertain some fatal Design"²⁴⁴ because of her return of his unopened letter. When Lucy reports that he merely laughed, Arabella is "extremely surprised," but adroitly revises her interpretation to fit his reaction: "Doubtless, resumed she, having taken a little Time to consider of so strange a Phaenomenon, he laughed, because his Reason was disturbed at the sudden Shock he received"²⁴⁵ Similarly, after Arabella banishes Selvin from England, she holds out her hand to him, "supposing he would kneel to kiss it, and bathe it with his Tears."²⁴⁶ When he doesn't, "after standing a Moment in this Posture, and finding her Hand untouch'd, she concluded Grief had depriv'd him of his Senses, and that he would shortly fall into a Swoon"²⁴⁷

Because both the initial and the revised interpretations derive from romance, Lennox presents both as equally mistaken. Yet Arabella's romantic interpretations are often fundamentally true. For example, when Selvin and Tinsel send their letters of apology to Arabella, Lucy assures Arabella that they are not love letters. Arabella nevertheless refuses to receive them: "You are a simple Wench, said *Arabella* smiling: You may depend upon it, all Letters directed to me, must contain Matters of Love and Gallantry; and those I am not permitted to receive."²⁴⁸ This characteristically absolute statement is essentially true. With one exception — her uncle's letter informing her of her cousins' impending arrival²⁴⁹ — all of the letters Arabella receives during the novel do indeed contain "Matters of Love and Gallantry" because everyone in the

243. *Id.* at 312.

244. *Id.* at 15.

245. *Id.*

246. *Id.* at 313.

247. *Id.*

248. *Id.* at 293.

249. *See id.* at 79.

novel sees her primarily as an object of male desire.²⁵⁰ Thus, while deriving from the romantic notions the novel satirizes, Arabella's certainty about the contents of Tinsel's and Selvin's letters is justified.

Similarly, Arabella's ostensible misinterpretation of the highwaymen on the road to Bath actually reflects the reasonableness of her interpretive process. Glanville, Sir Charles, and the servants immediately identify the horsemen as highwaymen,²⁵¹ and the narrator endorses their interpretation, calling the horsemen "Highwaymen" and "Robbers."²⁵² Arabella, however, without access to the narrator's knowledge, sees only "Three or Four Men of a genteel Appearance."²⁵³ When they gallop toward the coach, she believes they are cavaliers coming to rescue her and Charlotte from the men whom they must see as abductors.²⁵⁴ When Arabella shouts from the coach to assure the horsemen that she and Charlotte are not being abducted, the narrator tells us that the men "were near enough to hear *Arabella's* Voice, though they could not distinguish her Words."²⁵⁵ According to the narrator, the men "gazed on her with great Surprise; and, finding they would be very well received, thought fit to abandon their Enterprize, and galloped away as fast as they were able."²⁵⁶ Arabella's reaction is interesting; the horsemen's departure leads her to revise her interpretation: "Since these Men, said *Arabella*, did not come to deliver us, out of a mistaken Notion, that we were carried away by Force, it must necessarily follow, they had some bad Design"²⁵⁷ This "bad Design," she clarifies, was "to carry us away."²⁵⁸

Arabella cannot know that the horsemen did not hear her disclaimer, nor can she have the narrator's knowledge of the motives for their departure (the well-armed men surrounding the coach and, perhaps, the spectacle of a lady leaning out the window, shouting). Her re-interpretation of their "Design" indicates that their leaving at that point in the encounter was uncharacteristic of rescuers. Had the men been rescuers, Arabella's behavior implies, they would have persisted despite her disclaimer. According to the reality enforced by the narrator, of course, her identification of the

250. See *id.* at 13, 174, 194, 255, 355.

251. See *id.* at 257.

252. *Id.* at 258.

253. *Id.* at 257.

254. See *id.* at 258.

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.* at 259.

men's "bad Design" is just as erroneous as her identification of their "good Design." But Arabella eventually gets the best of the argument. To Glanville's assertion that "these Men had no other Design, than to rob us of our Money,"²⁵⁹ Arabella replies:

Were these Cavaliers, who appeared to be in so handsome a Garb, that I took them for Persons of prime Quality, were they Robbers? I have been strangely mistaken, it seems: However, I apprehend there is no Certainty, that your Suspicions are true; and it may still be as I say, that they either came to rescue or carry us away.²⁶⁰

Glanville wisely "change[s] the Discourse"²⁶¹ since Arabella's point here seems unanswerable. The others' interpretation of the horsemen is not true in any absolute sense. In the others' view, given their experience, the horsemen are more likely highwaymen than either rescuers or ravishers. However, in Arabella's view, given her experience, it is much more probable that the men are rescuers or ravishers; she undoubtedly knows as little about highwaymen as she knows about "Scandal"²⁶² and horse races.²⁶³

Of course, Arabella's interpretations are not always so reasonable. One example is her belief that her uncle is a suitor (a "misinterpretation" that may reflect a deeper psychological or sociological truth). Her ultimate error — interpreting the horsemen at Twickenham as kidnappers²⁶⁴ — endangers her very existence. But other characters in the novel also misperceive reality. Hervey misreads Arabella's disdain as "aukward Cunning"²⁶⁵ or "Simplicity."²⁶⁶ Likewise, Glanville misinterprets Arabella's diffidence as snobbery,²⁶⁷ although by the end of the novel he is the only character besides Lucy who can understand Arabella's expressive gestures.²⁶⁸ Like her brother, Charlotte Glanville has interpretive difficulties;²⁶⁹ her greatest failure is her belief that Sir George Bellmour is ridiculing Arabella by addressing her in the accepted

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* at 77.

263. *See id.* at 81.

264. *See id.* at 362.

265. *Id.* at 12.

266. *Id.* at 21.

267. *See id.* at 33, 37.

268. *See id.* at 304, 352.

269. *See, e.g., id.* at 89, 118.

romance style.²⁷⁰ Significantly, the worst interpreter in the novel is also the character most convinced of Arabella's madness, her uncle, Sir Charles, who misjudges both Bellmour's motive for presenting himself as the Prince of Kent²⁷¹ and the Countess's ability to identify with Arabella's romantic delusions.²⁷² If Arabella has difficulty interpreting her experience correctly, the other characters are scarcely more successful.

Although a postmodern reader may be tempted to see the novel as presenting Arabella's world as an alternative, equally valid version of truth, the narrator serves clearly to enforce the claims of conventional reality. The novel's dedication to an objectively true reality is demonstrated by Arabella's and Charlotte's debate about the moon. Arabella objects to Charlotte's comparing the moon to "a Cream Cheese" by asserting that the moon is "a Planet, which, haply, is not much less than our Earth."²⁷³ Charlotte derides this assertion, noting that the moon does not "appear broader than your Gardener's Face."²⁷⁴ Rejecting the idea that the moon is "not much less than the whole World," she exclaims, "Why, certainly, I have more Reason to trust my own Eyes, than such whimsical Notions as these."²⁷⁵ Charlotte's relativist view of reality, far from being validated, is presented as an example of her "Ignorance."²⁷⁶ The novel accepts the distinction between truth and falsity; Lennox does not celebrate her heroine as a proto-postmodernist. Nevertheless, the other characters' misinterpretations, the essential accuracy of many of Arabella's interpretations, and Arabella's interpretive self-confidence destabilize the satire. As Laurie Langbauer points out, "ridicule is not so much what the book does as what it is *about*. . . . [W]e are not so much laughing at Arabella; we are watching the other characters laughing. . . . Because the characters laugh first, the author and the readers are slightly dissociated from the ridicule."²⁷⁷ Arabella is insulated from the full force of ridicule by the narrative's "slight dissociation" of Arabella's processes from her conclusions. As we have seen, the narrative lingers over scenes in which Arabella's reasoning unfolds; in contrast, Charlotte's perfunctory "reasoning" about the size of the moon consists entirely of her derisive comparison between her cousin's "whimsical

270. See *id.* at 139, 254.

271. See *id.* at 253-54.

272. See *id.* at 330.

273. *Id.* at 142.

274. *Id.* at 143.

275. *Id.*

276. *Id.*

277. Langbauer, *supra* note 206, at 33.

Notions" and the (mistaken) evidence of her "own Eyes."²⁷⁸ Arabella's romantic conclusions are just as incorrect as Charlotte's astronomical ones, but Arabella earns greater respect as a reasoner. Because the narrator gives the reader access to Arabella's mental processes, the reader can appreciate an aspect of Arabella that the characters cannot. The characters judge her entirely by her ridiculous conclusions; the reader can also judge her by her powers of reason.

This distinction between premises and processes was an accepted part of eighteenth-century epistemology. Locke makes this very distinction in his definition of "*mad Men*":

[T]hey do not appear to me to have lost the Faculty of Reasoning: but having joined together some *Ideas* very wrongly, they mistake them for Truths; and they err as Men do, that argue right from wrong Principles. For by the violence of their Imaginations, having taken their Fancies for Realities, they make right deductions from them.²⁷⁹

As Leland Warren points out, Arabella satisfies Locke's definition of madness.²⁸⁰ Like Locke's madman, Arabella has not lost "the Faculty of Reasoning," but makes "right deductions" from her mistaken premises. Just as Arabella sees herself as a romance heroine, demanding that others behave accordingly, so in Locke's example, "a distracted Man fancying himself a King, with a right inference require[s] suitable Attendance, Respect, and Obedience."²⁸¹ In Locke's view, madmen reason correctly from wrong premises, in contrast to "Naturals" or "Idiots," who "make very few or no Propositions, and reason scarce at all."²⁸² No one could claim that Arabella "reason[s] scarce at all," her mental deficiency lies not in her Reason, which remains very active, but in her distorted premises.

These distorted premises result in a specific mental deficiency that becomes a central satirical target: Arabella's legalism. Arabella recognizes the supremacy of the "Laws of Romance,"²⁸³ with their subsidiaries, the "Laws of Gallantry and Respect"²⁸⁴ and

278. LENNOX, *supra* note 200, at 143.

279. JOHN LOCKE, AN ESSAY CONCERNING HUMANE UNDERSTANDING bk. II, ch. ix, § 13, at 161 (Peter H. Nidditch ed., 1975) (4th ed. 1700).

280. See Warren, *supra* note 224, at 367.

281. LOCKE, *supra* note 279, bk. II, ch. ix, § 13, at 161.

282. *Id.*

283. LENNOX, *supra* note 200, at 137, 172, 297, 348.

284. *Id.* at 32.

the "Laws of Decency and Decorum."²⁸⁵ Her actions are always constrained by these laws, and by the "examples" of the romance heroines.²⁸⁶ Because romance convention forbids the hero to make an open declaration of love to the heroine, Arabella is offended by Glanville's admission that he admires and loves her.²⁸⁷ She overanxiously forestalls any similar declaration by potential lovers like Hervey²⁸⁸ and Selvin.²⁸⁹ She is not afraid to enter the stranger's chariot because "nothing was more common to Heroines than such Adventures";²⁹⁰ she visits Glanville's sickroom, though he has not asked for her, because several romance heroines "condescended" to visit their lovesick heroes.²⁹¹

If Arabella's "reliance on precedents set by books parodies the laws of probabilistic inference from past events to future,"²⁹² it also subjects to scrutiny the reasoning method used in common-law decisionmaking. Like an English judge, Arabella, whenever faced with a difficult decision, searches for a "precedent" from the romances to guide her actions. Realizing that her suspicion of her uncle's designs on her is an "extravagant . . . Notion," she nevertheless feels that her suspicion is valid because she "found Precedents in her Romances of Passions full as strange and unjustifiable."²⁹³ Faced with Hervey's letter, Arabella "search[es] the Records of her Memory for a Precedent, and not finding, that any Lady ever opened a Letter from an unknown Lover, she reiterate[s] her Commands to *Lucy* to carry it back . . ."²⁹⁴

However, like a judge, Arabella is also willing to act in the absence of precedent. She instructs Lucy how to relate her history, although "there was no Precedent in all the Romances her Library was stuffed with" for a maid's having to be coached.²⁹⁵ When Arabella fears that her father will force her to marry Glanville against her wishes, she resolves "to provide for her own Security, by a speedy Flight."²⁹⁶ Although "[t]he Want of a Precedent . . . for an Action of this Nature, held her a few Moments in Suspense," she reasons herself out of the dilemma by noting "that there was not

285. *Id.* at 161.

286. *See, e.g., id.* at 10, 27, 45.

287. *See id.* at 32.

288. *See id.* at 11.

289. *See id.* at 283.

290. *Id.* at 100.

291. *Id.* at 132.

292. Depuydt, *supra* note 229, at 81.

293. LENNOX, *supra* note 200, at 164.

294. *Id.* at 13.

295. *Id.* at 122.

296. *Id.* at 35.

any of the Ladies in Romances, in the same Circumstances with herself"²⁹⁷ In modern terms, we would say that Arabella "distinguishes" her case from the cases of the romance heroines, freeing herself to flee her father's house on the basis of her own "Conviction."²⁹⁸ Of course, her father's illness pretermits her flight, but she has proved herself the equal in method, if not in substance, to an English judge. Indeed, Arabella's explanations for her interpretations often read like modern judicial opinions, larded as they are with citations to romance precedents.²⁹⁹

Although Arabella is capable of reasoning like a common-law judge, she lacks his authority. The "pious Monitor"³⁰⁰ who attends her after her plunge into the Thames does not view her as an authoritative reasoner. Adopting the other characters' view of her as silly or mad, he views his office as "the Cure of Arabella's Mind."³⁰¹ Arabella's insistence that her dive into the river was "reasonable and just" and "great and glorious"³⁰² is characterized as "Obstinacy."³⁰³ Yet, despite her lack of authority, Arabella skillfully holds her own in the argument with the clergyman. When she asks, respecting her dive into the Thames, whether she "was frightened without Cause," he replies, "It is certain, Madam, . . . that no Injury was intended you."³⁰⁴ Arabella properly reprimands him for this reply, noting that his answer is both nonresponsive and based on speculation: "Human Beings cannot penetrate Intentions, nor regulate their Conduct but by exterior Appearances."³⁰⁵ Again, when the Doctor asserts that the French romances "at once vitiate the Mind, and pervert the Understanding; and . . . if they are at any Time read with Safety, owe their Innocence only to their Absurdity," Arabella "entangle[s]" him by replying, "These Books, Sir, thus corrupt, thus absurd, thus dangerous alike to the Intellect and Morals, I have read; and that I hope without Injury to my Judg-

297. *Id.*

298. *Id.*

299. *See, e.g., id.* at 132, 183, 280, 316, 335. Eighteenth-century judges did not use precedent in the same systematic, thorough way as modern Anglo-American judges do. As James Oldham explains, the incompleteness and uncertain quality of most case reports in the eighteenth century made access to precedent difficult. *See* 1 OLDHAM, *supra* note 53, at 102-05. Nevertheless, Lord Mansfield, at least, "acknowledged the importance of precedent (often urging barristers to search more thoroughly for authorities or doing so himself)." *Id.* at 102.

300. LENNOX, *supra* note 200, at 366.

301. *Id.* at 368.

302. *Id.*

303. *Id.* at 369.

304. *Id.* at 371.

305. *Id.*

ment, or my Virtue."³⁰⁶ The Doctor realizes too late that he cannot make this argument without insulting Arabella.

So far, Arabella has the best of the dispute. Then, however, she concedes that the romances are fictions and asks the clergyman, "[W]hy, supposing them Fictions, and intended to be received as Fictions, [do] you censure them as absurd?"³⁰⁷ The Doctor launches into his famous Johnsonian sermonette: "The only Excellence of Falshood . . . is its Resemblance to Truth . . ."³⁰⁸ The romances, he argues, are unrealistic because "they teach young Minds to expect strange Adventures and sudden Vicissitudes . . ."³⁰⁹ He asserts that "[a] long Life may be passed without a single Occurrence that can cause much Surprize, or produce any unexpected Consequence of great Importance . . ."³¹⁰ Just as the other characters' identification of the highwaymen was only probabilistic, so the canon's assertion rests only on probability: a life *may* be lived without Adventure. Arabella quickly presents a specific example to the contrary: "I have found that Life is subject to many Accidents. Do you count my late Escape for nothing?"³¹¹ The narrator calls Arabella's assertion an "Absurdity,"³¹² the Doctor does indeed count her experience for "nothing" because it is, in his words, "the Fact which is at present the Subject of Dispute."³¹³ We recognize here the Doctor's devaluation of Arabella's particular experience in relation to his own abstract platitudes. Once the validity of a woman's interpretation of her experience is made the "Subject of Dispute," the woman's own life is deprived of any epistemological authority.

In effect, Arabella questions, "How can you say such things never happen when such a thing just happened to me?" The Doctor answers her by saying that the real question is whether she *should* have interpreted her experience as an adventure. The Doctor's case rests on the proposition that Arabella is not *entitled* to interpret her life as one of Adventure; she, along with everyone else, should "suffer [herself] to be carried alike down the Stream of Custom."³¹⁴

Having successfully excluded from the argument the evidence of Arabella's own experience, the Doctor abandons reason and

306. *Id.* at 374.

307. *Id.* at 378.

308. *Id.*

309. *Id.* at 379.

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

appeals instead to authority — his own: “your Ladyship must suffer me to decide, in some Measure authoritatively, whether Life is truly described in those Books”³¹⁵ The clergyman makes his own life the measure of Truth. Submitting to the canon’s authority to define reality, Arabella still insists that the romances depict a world superior to the real one.³¹⁶ The Doctor, however, appeals to Christian morality, and by emphasizing the “Ruin and Desolation, Bloodshed and Misery”³¹⁷ depicted in the romances, he convinces Arabella that they celebrate “the Crime of deliberate unnecessary Bloodshed.”³¹⁸ Earlier, Arabella’s relativist reasoning about the identity of the highwaymen silenced Glanville; here, the clergyman’s appeal to the absolute ground of Christianity silences Arabella. Conceding the argument by declaring that her “Heart yields to the Force of Truth,”³¹⁹ Arabella implicitly acknowledges that the values of the pagan world must yield to those of the Christian. One system of conventions, Christian morality, proves superior to another, the romances.

The novel does not end with Arabella’s conversion, however. Her change of heart earns her a companionate marriage, in which she and Glanville are “united . . . in every Virtue and laudable Affection of the Mind.”³²⁰ To emphasize the happiness of this ending for Arabella, Lennox contrasts it with Charlotte’s end, in which she and Sir George are “married in the common Acceptation of the Word; that is, they [are] privileged to join Fortunes, Equipages, Titles, and Expence.”³²¹ Modern critics have debated what kind of resolution Arabella’s conversion and subsequent marriage represents. The minority concur with Lennox’s apparent intention that the ending be viewed as a happy one for the heroine. Sally C. Hoople describes the ending as “the comparatively happy conclusion . . . which leaves no doubt about the value of sanity.”³²² Elaine M. Kauvar, analogizing *The Female Quixote* to Austen’s coming-of-age novels, characterizes the novel as “a story in which a character progresses from a mistaken adherence to illusions to a realistic and happy acceptance of life.”³²³

315. *Id.*

316. *See id.* at 380.

317. *Id.* at 381.

318. *Id.*

319. *Id.*

320. *Id.* at 383.

321. *Id.*

322. Sally C. Hoople, *The Spanish, English, and American Quixotes*, 22 ANALES CERVANTINOS 119, 141 (1984).

323. Kauvar, *supra* note 217, at 214.

But most critics read the ending as a defeat for Arabella, a loss of authority and autonomy.³²⁴ For Patricia Meyer Spacks, the conclusion represents Arabella's "acceptance of male wisdom, her rejection of her own imagined selfhood, her willingness to dwindle into a wife."³²⁵ In Deborah Ross' view, the novel teaches that "the clearest path to personal happiness is obedience to just authority."³²⁶ That authority is clearly male, hegemonic, and Johnsonian. Laurie Langbauer asserts that Arabella's conversion entails,

her complete identification with men. . . . At the end of the book, Arabella is inaugurated into man's realm and becomes indistinguishable from the men in it. She leaves romance by participating in the patriarchal discourse of moral law, and in that discussion loses her voice; her words become literally undistinguishable from those of the Doctor.³²⁷

These critics lament Arabella's reconciliation to the existing order because that order, dominated by men, necessarily involves female subordination. In losing her romance world, Arabella loses not just an unhealthy illusion (although it is that) but, more importantly, an empowering alternative to the existing male order. Her brief period of autonomy, misguided as it is, nevertheless represents a feminist potential.

Indeed, some criticism verges on blaming Lennox personally for the betrayal of an incipient feminist vision. Pointing to the controversy over Johnson's alleged authorship of the chapter in which Arabella is converted, Langbauer draws an explicit analogy between the heroine's loss of voice and the author's:

And just as Arabella, once in [the male] world, loses her voice, when Lennox calls on it in the penultimate chapter of *The Female Quixote*, so does she. Like Arabella's voice with the Doctor's, Lennox's blends with Dr. Johnson's, so much so that it is impossible to know who really wrote the chapter — but whether Dr. Johnson wrote it or whether he influenced a most faithful pastiche is immaterial. What is important is that Lennox herself, literally or figuratively, must disappear; power and authority can enter her text only as a man; only a man can dispel romance.³²⁸

324. See, e.g., KRAFT, *supra* note 221, at 87; Warren, *supra* note 224, at 378.

325. Spacks, *supra* note 209, at 540.

326. Ross, *supra* note 213, at 461.

327. Langbauer, *supra* note 206, at 42.

328. *Id.* at 42-43.

David Marshall reads the ending as a "double renunciation: Arabella's renunciation of romances *and* Lennox's apparent abdication of female authority and authorship . . . in turning over her narrative to the mastery of Dr Johnson, or at least his masterful voice."³²⁹ Susan Kubica Howard likewise discerns Johnson's influence in the resolution of the novel's plot. Comparing *The Female Quixote* unfavorably with Lennox's first novel, *The Life of Harriot Stuart*, Howard opines that Lennox's dependence on Johnson's informal patronage required her to tone down her heroine's independence, to "support a masculine vision of society which labeled women submissive, passive, and inferior to men."³³⁰ According to Howard, Johnson's influence "conflict[ed] with the more revolutionary voice Lennox could offer literature."³³¹

This almost wistful critical longing for a more "revolutionary" novel can be seen as a projection of late twentieth-century feminist sensibilities onto the novel. Some critics seem unaware of this ahistorical tendency; Deborah Ross notes that the "arena in which women can exercise their powers . . . does not yet exist — Arabella, after all, has no career, though her author does" ³³² Other critics refer explicitly to the disparity between modern feminist visions and eighteenth-century literary conventions. For example, Catherine Craft concedes, "England in 1752 is neither the time nor the place for herstory."³³³ The (virtuous) career woman whose life is narratable, a sort of Mary Tyler Moore figure — certainly, this represents an alternative to both Arabella's romantic existence and to her companionate marriage, but undoubtedly an unrealistic one, given the conventions of eighteenth-century fiction. These critics' eagerness to find a meaningful realm for the exercise of Arabella's intellect, their desire to posit other ways in which Arabella could have been given a meaningful role in society, reflect their realization of the incommensurability between Arabella's powers and her possibilities. Frustrated with this incommensurability, some feminist critics wish to provide a realistic realm of existence for the

329. David Marshall, *Writing Masters and "Masculine Exercises" in The Female Quixote*, 5 EIGHTEENTH-CENTURY FICTION 105, 117 (1993).

330. Susan Kubica Howard, *Introduction* to CHARLOTTE LENNOX, *THE LIFE OF HARRIOT STUART, WRITTEN BY HERSELF* 13, 17 (Susan Kubica Howard ed., Farleigh Dickinson University Press 1995) (1751).

331. *Id.* at 286 n.21.

332. ROSS, *supra* note 205, at 109.

333. Catherine A. Craft, *Reworking Male Models: Aphra Behn's Fair Vow-Breaker, Eliza Haywood's Fantomina, and Charlotte Lennox's Female Quixote*, 86 MOD. LANGUAGE REV. 821, 837 (1991).

heroine in which she will not be subordinated to men. In essence, they believe that she *deserves* autonomy and intellectual equality, even while they realize that this is precisely what eighteenth-century English society, and fictional conventions, denied her.

If England in 1752 was neither the time nor the place for herstory, for what *was* it the time and place? By asking this question, by historicizing the inquiry into the referential aspects of the quixotean satire, feminist critics can struggle more fruitfully to understand the sociohistorical valence of this novel. The first clue, which we have already explored, is Arabella's ridiculous but enlightened character, the incommensurability that has stimulated feminist criticism of the novel. The second clue is the novel's vocabulary, Lennox's remarkable choice of terms within which to imbricate her heroine. Lennox consistently associates Arabella with two terms: Custom, which carries a negative connotation, and Reason, which carries a positive connotation. The combination of Arabella's characterization and the vocabulary with which she is associated helps us make a connection between the novel and one of the earliest forms of feminist discourse, the writings of Mary Astell and other early eighteenth-century feminists. The unmistakable reference Lennox makes to the discourse of these writers provides an important context for our understanding of the construction of Arabella and the satiric content of the novel.

IV. CUSTOM VS. REASON IN EIGHTEENTH-CENTURY FEMINISM

A. *Mary Astell and the Early Eighteenth-Century Feminists*

In discussing the social position of English women at the turn of the eighteenth century, Mary Astell and her followers invoked the distinction between Reason and Custom. While asserting that women's subordinate social, political, and legal position was a product of Custom, they claimed for women equal access to the realm of Reason.³³⁴ This claim was made possible by the advent of Cartesian philosophy, which broke the conceptual linkage between women's minds and their bodies by positing the mind as independ-

334. See HILDA L. SMITH, *REASON'S DISCIPLES: SEVENTEENTH-CENTURY ENGLISH FEMINISTS* 11-12 (1982). Women's invocation of Reason in claiming equality of civil and political rights was not limited to England. See generally GENEVIÈVE FRAISSE, *REASONS' MUSE: SEXUAL DIFFERENCE AND THE BIRTH OF DEMOCRACY* (Jane Marie Todd trans. 1994) (examining period 1800-1820 in France); ERICA HARTH, *CARTESIAN WOMEN: VERSIONS AND SUBVERSIONS OF RATIONAL DISCOURSE IN THE OLD REGIME* (1992) (examining pre-Revolutionary France).

ent from the body. In classical Greece, "femaleness was symbolically associated with what Reason supposedly left behind — the dark powers of the earth goddesses, immersion in unknown forces associated with mysterious female powers."³³⁵ As Lorraine Code puts it, "In the folklore of most western societies women are represented . . . as incapable of having knowledge of the best and most rational kind."³³⁶ For example, in seventeenth- and eighteenth-century satires, authors demonstrated their inability to imagine strong intellects in feminine bodies; they often depicted learned women as Amazons having the same physical attributes and engaging in the same rigorous physical training as men.³³⁷ It was a commonplace by the eighteenth century that the wrong kind of learning, or too much of it, would "unsex" a female.³³⁸ Concomitantly, proponents of women's intellectual inferiority asserted that women's mental energies were naturally fixated on their bodies. Lord Lyttleton's poem, "Advice to a Lady," addressed to "Belinda," powerfully illustrates the conventional view of the relationship between women's minds and their bodies:

What is your sex's earliest, latest care,
 Your heart's supreme ambition? To be fair:
 For this the toilet every thought employs,
 Hence all the toils of dress, and all the joys:
 For this, hands, lips, and eyes are put to school,
 And each instructed feature has its rule
 Do you, my fair, endeavour to possess
 An elegance of mind as well as dress;
 Be that your ornament, and know to please
 By graceful nature's unaffected ease.
 Nor make to dangerous wit a vain pretence,
 But wisely rest content with modest sense;
 For wit, like wine, intoxicates the brain,
 Too strong for feeble woman to sustain³³⁹

Belinda is caught in a vicious mind-body circle in which her toilet becomes her only school. We might distill Lord Lyttleton's conventional view as follows: women's bodies weaken their minds so as to disqualify them from attending to anything other than their own

335. LLOYD, *supra* note 174, at 2.

336. CODE, *supra* note 2, at x.

337. See NUSSBAUM, *supra* note 43, at 43-56.

338. See *id.* at 43.

339. Lord Lyttleton, *Advice to a Lady* (1731), in POEMS BY THE RIGHT HONOURABLE THE LATE LORD LYTTLETON 44-45 (Glasgow, Andrew Foulis 1777).

bodies. The parallel with the view of female rationality inscribed within the legal system by the jury of matrons is clear: women — for no other reason than their sex (i.e., the femaleness of their bodies) — are disqualified from exercising intellectual authority over anything other than the bodies of other women.

But Cartesian philosophy held the promise of allowing women access to “the best and most rational” knowledge. If mind was wholly separate from body, as asserted by Descartes, women’s minds could not be viewed as contaminated by their alleged bodily inferiority. In the words of François Poullain de la Barre in 1673, “L’esprit n’a point de sexe” (“The Mind has no sex”).³⁴⁰ By defining Reason as “a distinctively methodical way of thinking”³⁴¹ accessible to the *human* mind, Cartesian philosophy was built upon the premise that knowledge could be acquired by “following the ‘natural’ processes of the mind.”³⁴² The solitary pursuit of one’s own mental processes, Descartes believed, could lead to the discovery of new truth because “[t]he correspondence between the basic structures of human thought and the order of the world . . . is divinely guaranteed.”³⁴³

Reason as a divinely ordained mental process for discovering truth — this was the power women claimed as their passport to equality. From Descartes, they argued “that God had created women as human beings with rational souls which he expected to be developed, and that men and women had equal rational abilities.”³⁴⁴ In *A Serious Proposal to the Ladies*, Mary Astell wrote, “GOD has given Women as well as Men intelligent Souls.”³⁴⁵ By linking woman’s intellect with her soul, and by giving both the same unimpeachable Creator, Astell boldly assumed what had only been argued earlier by Quakers and other non-Conformist writers: the spiritual equality of women.³⁴⁶ For Astell, in Rosemary Radford Reuther’s words, “[h]uman reason is a spark of the divine Reason.”³⁴⁷

340. SCHIEBINGER, *supra* note 16, at 1.

341. LLOYD, *supra* note 174, at 39.

342. *Id.* at 43.

343. *Id.* at 42.

344. SMITH, *supra* note 334, at 12. For a concise summary of the difficulties that Cartesianism posed for women’s claims to intellectual equality, see NANCY TUANA, *THE LESS NOBLE SEX: SCIENTIFIC, RELIGIOUS, AND PHILOSOPHICAL CONCEPTIONS OF WOMAN’S NATURE* 60-64 (1993).

345. MARY ASTELL, *A SERIOUS PROPOSAL TO THE LADIES. PARTS I AND II*, at 18 (Source Book Press 1970) (4th ed. 1701).

346. See Rosemary Radford Reuther, *Prophets and Humanists: Types of Religious Feminism in Stuart England*, 70 J. RELIGION 1 (1990).

347. *Id.* at 15.

Astell was also prepared to meet her opponents' counterargument: If women are equal to men in rationality, why had they not excelled equally in intellectual pursuits? The feminists' answer to this question was "Tyrant Custom."³⁴⁸ It was Custom that denied women access to the political sphere, denied them equal legal rights, and most of all, denied them a useful and truly intellectual education that would have equipped them to participate in the legal and political systems. As conceived by Astell, Custom was not an entity, but a force, "that merciless torrent that carries all before it."³⁴⁹ Despite the power of Custom, Astell noted, its dictates are not necessarily right: "That the Custom of the World has put Women, generally speaking, into a State of Subjection, is not denied; but the Right can no more be prov'd from the Fact, than the Predominancy of Vice can justify it."³⁵⁰ For Astell, "Human Actions are no otherwise valuable, than as they are conformable to Reason"³⁵¹ Astell and her followers associated Reason with divinely ordained nature, Custom with man-made culture. For the early eighteenth-century feminists, the tyranny of Custom was most noticeable and most deleterious to women in the area of education. During the seventeenth and eighteenth centuries, women were excluded from the universities, while enrollment of men increased rapidly.³⁵² Thus, women were denied the study of the classics, which were "accepted as the essential reading not only of scholars, but also of gentlemen."³⁵³ This exclusion was justified on the grounds that women were "deficient in natural powers," that their "immoral inclinations" would be encouraged by the pagan writers, and that a classical education would be useless to them since their proper sphere was "the kitchen, sickroom and nursery."³⁵⁴ It is impossible to generalize across class lines about the education women did receive; however, it seems clear that most women's education in the seventeenth and eighteenth centuries, depending on their social class, consisted of some combination of basic reading and writing, household skills, handicrafts, and "accomplishments"

348. ASTELL, *supra* note 345, at 11.

349. *Id.* at 10.

350. MARY ASTELL, SOME REFLECTIONS UPON MARRIAGE 99 (Source Book Press 1970) (4th ed. 1730).

351. *Id.* at 83.

352. See SMITH, *supra* note 334, at 21-22.

353. PATRICIA PHILLIPS, THE SCIENTIFIC LADY: A SOCIAL HISTORY OF WOMEN'S SCIENTIFIC INTERESTS 1520-1918, at 3 (1990).

354. *Id.* at 12. This congeries of reasons for the exclusion of women from higher education embraces both the "inferior intellect" and the "separate spheres" theories.

like fancy needlework, music, dancing, and modern languages.³⁵⁵ The early eighteenth-century feminists saw clearly the relationship between Reason and the Custom that allowed only men access to a substantial education: "Sense is a Portion that GOD Himself has been pleased to distribute to both Sexes with an impartial Hand, but Learning is what Men have engross'd to themselves"³⁵⁶

In her poem, "The Emulation," Sarah Fyge Egerton summarized the relationship between male-maintained Custom and women's education:

Say Tyrant Custom, why must we obey,
The impositions of thy haughty Sway;
From the first dawn of Life, unto the Grave,
Poor Womankind's in every State, a Slave.

. . . .

They fear we should excel their sluggish Parts,
Should we attempt the Sciences and Arts.
Pretend they were design'd for them alone,
So Keep us Fools to raise their own Renown;

. . . .

And shall we women now sit tamely by,
Make no excursions in philosophy,
Or grace our thoughts in tuneful poetry?
We will our Rights in Learning's World maintain,
Wits Empire, now, shall know a Female Reign³⁵⁷

Egerton's use of the future tense emphasizes that this fruition of Cartesian philosophy — women's "Reign" in "Wits Empire" — has not yet been realized. Her vision of the learned women of the future is obscured by the specter of the foolish women of the present.

The specter of foolish women resulted, however, only because men's superior education skewed the available evidence about men's and women's respective intellectual abilities. The early eighteenth-century feminists argued that women's intellectual *existence*, as fettered by Custom, could not serve as valid evidence of their intellectual *potential*, once their Reason was liberated. In their view, the social convention that limited women's educational opportunities had stunted women's natural rational capacities. As

355. See SMITH, *supra* note 334, at 23.

356. ASTELL, *supra* note 350, at 111.

357. Sarah Fyge Egerton, *The Emulation*, lines 1-4, 19-22, 32-33 (1703), reprinted in THE "OTHER" EIGHTEENTH CENTURY: ENGLISH WOMEN OF LETTERS 1660-1800, at 141-42 (Robert W. Uphaus & Gretchen M. Foster eds., 1991) [hereinafter THE "OTHER" EIGHTEENTH CENTURY].

Judith Drake wrote in 1696, "For a Man ought no more to value himself upon being Wiser than a Woman, if he owe his Advantage to a better Education, and greater means of Information, than he ought to boast of his Courage, for beating a Man, when his Hands were bound."³⁵⁸ Mary Astell argued that since "Boys have much Time and Pains, Care and Cost bestow'd on their Education, [while] Girls have little or none," it is fundamentally unfair to assert "that Mens Understandings are superior to Womens, for, after many Years Study and Experience, they become wise and learned, and Women are not Born so!"³⁵⁹

Like Egerton, who admitted on behalf of all women that men "Keep us Fools,"³⁶⁰ Astell did not attempt to deny her opponents' portrayal of women; in society as it exists, she admitted, women may indeed appear ridiculous:

There is a sort of Learning indeed which is worse than the greatest Ignorance: A Woman may study Plays and Romances all her days, and be a great deal more knowing but never a jot the wiser. Such a knowledge as this serves only to instruct and put her forward in the practice of the greatest Follies, yet how can they justly blame her who forbid, or at least won't afford opportunity of better? A rational mind *will* be employ'd, it will never be satisfy'd in doing nothing, and if you neglect to furnish it with good materials, 'tis like to take up with such as come to hand.³⁶¹

As depicted by Astell, women are reasoning machines that must be provided with proper fuel, or starving scavengers who, forbidden higher forms of sustenance, satisfy their ravenous intellectual appetites with less nutritious fare. Women should read "good materials," which Astell explicitly contrasts with "Plays and Romances." For Astell, the romances that "instruct" women in "the greatest Follies" do not represent a desirable feminist alternative to the masculine world. Women read romances, not because they long for a world of female power and significance, but only because romances are often the only available materials with which to employ their ever-active minds. Clearly, for Astell, Woman as she *is*, nourished on "Plays and Romances," is inferior to Woman as she *should be*, exercising her intellect on "good materials."

358. JUDITH DRAKE, *AN ESSAY IN DEFENCE OF THE FEMALE SEX* (1696), *excerpted in THE "OTHER" EIGHTEENTH CENTURY*, *supra* note 357, at 23, 30.

359. ASTELL, *supra* note 350, at 122-23.

360. Egerton, *supra* note 357, at 141.

361. ASTELL, *supra* note 345, at 19-20.

The warning Astell issues in this passage — “if *you* neglect to furnish it with good materials”³⁶² — seems directed at men. Throughout the early feminists’ writings, women are depicted as largely the product of men. Men are the agents who have produced women’s subordinate intellectual existence. The agency of men and the passivity of women are figured powerfully in the following passage, in which Astell uses a horticultural metaphor with Biblical echoes³⁶³ to describe the causal relationship between Man’s control of education and Woman’s lack of intellectual achievement:

The Soil is rich and would if well cultivated produce a noble Harvest[;] if then the Unskilful Managers, not only permit, but encourage noxious Weeds, tho’ we shall suffer by the Neglect, yet they ought not in justice to blame any but themselves, if they reap the Fruit of this their foolish Conduct. Women are from their very Infancy debar’d those Advantages, with the want of which they are afterwards reproached, and nursed up in those Vices which will hereafter be upbraided to them. So partial are Men as to expect Brick where they afford no Straw; and so abundantly civil as to take care we shou’d make good that obliging Epithet of *Ignorant*, which out of an excess of good Manners, they are pleas’d to bestow on us!³⁶⁴

Woman as she *is*, Astell associates with man-made culture; Woman as she *should be*, she associates with Nature, the “rich Soil” that, properly cultivated (and Astell’s image benefits from the connotations of this word) would yield a “noble Harvest.” To post-Freudian readers, the image of men as farmers tilling the fertile soil of women’s minds resonates with psychosexual overtones. Astell’s immediate point is more practical, however. She seeks to deprive her opponents of an important piece of evidence: the lack of intellectual achievement by the generality of women in her time. Instead, she argues, women’s alleged intellectual inferiority constitutes a male-initiated and male-maintained “vicious circle.”³⁶⁵ Men deny women the benefits of a substantive education, relegate

362. *Id.* at 20 (emphasis added).

363. This metaphor was not original with Astell; indeed, by the eighteenth century it had become somewhat conventional. For example, in 1675, Hannah Woolley wrote: “[H]ad we the same Literature, [men] would find our brains as fruitful as our bodies. . . . I cannot but complain of, and must condemn the great negligence of Parents, in letting the fertile ground of their Daughters lie fallow, yet send the barren Noddles of their sons to the University” ADA WALLAS, *BEFORE THE BLUESTOCKINGS* 45 (1929) (quoting HANNAH WOOLLEY, *THE GENTLEWOMAN’S COMPANION* 2 (1675)).

364. ASTELL, *supra* note 345, at 6.

365. SMITH, *supra* note 334, at 125.

them to reading "Plays and Romances," then unfairly use the scanty harvest of their minds as evidence of the barrenness of their intellects.

In opposing Custom to Reason, Astell and her followers made a bold analytical and rhetorical move. By associating Reason with the divinely ordained natural order, they could argue that if women, like men, have souls, then they also share equally with men in Reason. This strategy implicitly condemned, on the ground of religion, anything that interfered with the exercise of Reason. By identifying the chief impediment to Reason as Custom — man-made social convention — the feminists assigned the responsibility for women's stunted intellectual growth to men, opened up a realm of intellectual potential for women, and argued that women's position could be ameliorated through remedial changes in society, chiefly the provision of a better education for women.

Male intellectuals in the eighteenth century may have used the terms "Reason" and "Custom" in imprecise and confused ways.³⁶⁶ But Astell and her colleagues, perhaps with the clarity of vision born of oppression, knew precisely what the words meant. Reason was a divine gift to all human beings regardless of sex, and Custom was a *man-made* system of rules that inhibited the exercise of that gift. With respect to women, Custom represented what *was*, and Reason stood for what *should be*.

B. From Astell to Sophia: Mid-Eighteenth-Century Feminists

The representation of Woman deployed by the early eighteenth-century feminists provided a useful model for the quixotean figure of Arabella because this representation embodied characteristics that were both ridiculed and applauded. Although there is no direct evidence that Lennox knew the works of the early eighteenth-century feminists,³⁶⁷ her novel originated within a culture in which the particular convention was accepted and recognized. The opposition of Custom to Reason predates Astell's feminist deployment of the dichotomy. Writers far better known than the early

366. See James Q. Whitman, *Why Did the Revolutionary Lawyers Confuse Custom and Reason?*, 58 U. CHI. L. REV. 1321 (1991).

367. However, there is a tantalizing bit of evidence that Lennox might have known the Sophia pamphlets. See *infra* text accompanying note 392. In the second of her pamphlets, among the characters that Sophia pillories are Tinsel, a young fop newly returned from his travels, and Grand Seigneur Selvin, whose betrothed commits suicide rather than marry him. See *BEAUTY'S TRIUMPH: OR, THE SUPERIORITY OF THE FAIR SEX INVINCIBLY PROVED* 284 (1751) [hereinafter *BEAUTY'S TRIUMPH*]. In the novel, Tinsel and Selvin are the names of the two pompous men whom Arabella meets at Bath. See *LENNOX*, *supra* note 200, at 281.

eighteenth-century feminists used it. John Locke opposed Custom to Reason in *Some Thoughts on Education*, one of the most popular works on education throughout the century. Commenting on the assertion that memorization is an effective pedagogical method, Locke notes, "I could wish this were said with as much Authority of Reason, as it is with forwardness of Assurance, and that this practice were established upon good Observation, more than old Custom."³⁶⁸ Explaining the purpose of his treatise, Locke says, with a touch of sarcasm, that it is intended for "those, whose Concern for their dear little Ones makes them so irregularly bold, that they dare venture to consult their own Reason, in the Education of their Children, rather than wholly to rely upon Old Custom."³⁶⁹ Custom — specifically, "old Custom" — denotes a conservative, traditional force that impedes more progressive, more natural pedagogy. Here, as in Astell, Reason is the positive pole; Custom, the negative.

Another popular writer who drew upon the dichotomy was Lady Mary Wortley Montagu. In a 1710 letter to Bishop Burnet accompanying her translation, from a Latin version, of Epictetus' *Enchiridion*, she lamented the state of women's education:

We are permitted no Books but such as tend to the weakening and Effeminateing the Mind . . . and tis look'd upon as in a degree Criminal to improve our Reason, or fancy we have any. We are taught to place all our Art in adorning our Outward Forms, and permitted, without reproach, to carry that Custom even to Extravagancy, while our Minds are entirely neglected

. . . .³⁷⁰

In another passage, she describes Custom as "the common road," complaining about the very "stream of Custom" that Lennox has her good Doctor propose as the alternative to Arabella's life of adventure: "This Custom, so long establish'd and industriously upheld, makes it even ridiculous to go out of the common road, and forces one to find as many Excuses, as if it was a thing altogether criminal not to play the fool in Consort with other Women of Quality"³⁷¹ Here, typically distinguishing herself from other women, Montagu acknowledges that bucking Custom by studying

368. JOHN LOCKE, *SOME THOUGHTS CONCERNING EDUCATION* 232 (John W. Yolton & Jean S. Yolton eds., 1989).

369. *Id.* at 265.

370. Letter from Lady Mary Pierrepont [Montagu] to Gilbert Burnet, Bishop of Salisbury (July 20, 1710), in 1 *THE COMPLETE LETTERS OF LADY MARY WORTLEY MONTAGU* 43, 44-45 (Robert Halsband ed., 1965).

371. *Id.* at 45.

Latin may make her seem ridiculous. The implication of the letter is clear: by rejecting studies that would "Effeminate" her mind, Montagu, unlike other women who "play the fool," has chosen to improve her Reason by breaking the yoke of Custom and breaking into the masculine preserve of Latin. Although she is careful to disavow any advocacy of "an Equality for the 2 Sexes,"³⁷² her invocation of Custom and Reason parallels Astell's.

The question remains, however, whether the feminist reading of the Custom/Reason dichotomy was available to Lennox at mid-century. To the casual observer it might appear that eighteenth-century feminism inscribes an arc from Mary Astell at the beginning of the century to Mary Wollstonecraft at its end. Hilda Smith asserts that Astell and her colleagues "did not have . . . a direct influence on feminist writings in the future This turn-of-the-century feminism was to fade when faced with eighteenth century values that embraced sentimentality and feeling rather than reason."³⁷³ According to Ruth Perry, "Mary Astell's fame as a writer dissipated very quickly after her death in 1731."³⁷⁴ Similarly, Sarah Fyge Egerton "was forgotten after her death in 1723."³⁷⁵ The work of the early eighteenth-century feminists was apparently unknown to the "Bluestockings," the group of female intellectuals who flourished at mid-century, including Elizabeth Carter, Elizabeth Montagu, and Hester Mulso.³⁷⁶ In Jane Spencer's words, "[T]he tradition of feminist polemic was, on the whole, submerged during the eighteenth century."³⁷⁷ Submerged, perhaps, when viewed in relation to the towering pillars of Mary Astell and Mary Wollstonecraft, but not invisible. A close examination of the half century that intervened between Astell's writing and the publication of *The Female Quixote* discloses a lively debate about women's rights, a debate that engaged the two issues that most concerned Lennox: the nature of a woman's intellect and her right to a learned education. In the first two decades of the century, two works appeared that supported the intellectual equality of women. *The Athenian Oracle* (1703-04) consisted of excerpts from the 580 numbers of John Dunton's magazine, *The Athenian Mercury* (17 March 1690/91-14 June 1697). In A.R. Humphreys' view, the

372. *Id.*

373. SMITH, *supra* note 334, at 15.

374. SYLVIA HARCSTARK MYERS, *THE BLUESTOCKING CIRCLE: WOMEN, FRIENDSHIP, AND THE LIFE OF THE MIND IN EIGHTEENTH-CENTURY ENGLAND* 122 (1990).

375. *Id.* at 121.

376. *See id.* at 122-29.

377. JANE SPENCER, *THE RISE OF THE WOMAN NOVELIST: FROM APHRA BEHN TO JANE AUSTEN* 108 (1986).

excerpts reflected a "notably progressive" view of women, admitting that "[w]omen have 'the same principle of reason with men.'"³⁷⁸ In 1714, Richard Steele made his contribution to women's education with *The Ladies Library*, an anthology of selections from earlier works. Although the excerpts chosen by Steele do not reflect the reforming spirit of Astell, they do "assume[] the capability of woman's mind, the dignity of her personality, and the desirability of giving her morals a rational basis."³⁷⁹

In *The Gentleman's Magazine*, "the most popular, most widely read, and most successful eighteenth-century journal,"³⁸⁰ whose first number appeared in 1731, "three out of every four writers who touched on the woman question bemoaned the plight of women, and suggested concrete reform measures."³⁸¹ As for whether the sexes have equal capacities, Jean Hunter found that *The Gentleman's Magazine* "almost always answered this question in the affirmative."³⁸² Among other feminist themes that figured prominently in the magazine, the "lack of educational opportunities" for women was the most pervasive.³⁸³ In an article in the October 1735 issue,³⁸⁴ "The Female Sex not the Weakest," a female writer, Climene, echoed Mary Astell's assessment of the inequality of educational opportunities:

I know not by what barbarous Policy we were first debarred the Improvements of our Mind by study, and our time employ'd about Trifles, while your Sex has all the Advantages of this Kind . . . Had we the same Pains and Cares taken of us, we should find, I fancy, more excellent Philosophers among the Women than among the Men.³⁸⁵

In addition to popular periodicals, the first half of the eighteenth century saw the publication of several feminist pamphlets. In 1721 appeared *Woman Triumphant: or, the Excellency of the Female Sex*;

378. A.R. Humphreys, *The "Rights of Woman" in the Age of Reason*, 41 MOD. LANGUAGE REV. 256, 258 (1946).

379. Rae Blanchard, *Richard Steele and the Status of Women*, 26 STUD. IN PHILOLOGY 325, 342 (1929).

380. Jean E. Hunter, *The 18th-Century Englishwoman: According to the Gentleman's Magazine*, in WOMAN IN THE EIGHTEENTH CENTURY AND OTHER ESSAYS 73, 87 (Paul Fritz & Richard Morton eds., 1976).

381. *Id.*

382. *Id.* at 85.

383. *Id.* at 81.

384. See MYERS, *supra* note 374, at 125.

385. Hunter, *supra* note 380, at 86.

asserted in opposition to the *Male*, written by "A Lady of Quality."³⁸⁶ This author argued that "[g]irls must be permitted the same opportunities as boys even to the level of university education,"³⁸⁷ and in an appended poem reminiscent of Egerton's "The Emulation," she writes:

So let our Sex be unto 'Learning' bred,
Like you in Liberal Sciences be read;
In one short Age the Press from our keen Wit,
Should out-shine All that Men have ever Writ,
As Woman now so Men should truckle then,
Beneath the Lashes of each Female Pen.³⁸⁸

Men, too, advocated equal educational opportunity for women. In Dodsley's *Collection of Poems by Several Hands* (London 1748), Thomas Seward addressed a poem to Miss Pratt, later Lady Camden, "The Female Right to Literature, in a Letter to a Young Lady, from Florence."³⁸⁹ In the poem Seward advises Miss Pratt to continue her studies, but admits that his advice is unconventional. He reviews the treatment of women in countries around the world, finally focusing on England:

But say, Britannia, do thy sons, who claim
A birth-right liberty, dispense the same
In equal scales? Why then does Custom bind
In chains of ignorance the female mind?³⁹⁰

It is interesting that a male poet, rather than addressing his fellow men (the "you" of poems by women), feels authoritative enough to address his nation ("Britannia") and to question its treatment of women. Of course, the address to Britain also allows him to use the third person to ask why "thy sons" (rather than "we," i.e., men) do not dispense liberty in equal measure to women. Seward recognizes that women's minds are bound in chains of ignorance, suggesting, like Astell, that women as they *are* do not accurately reflect women as they *could be*. Like Astell, Seward also identifies the culprit as

386. PHILLIPS, *supra* note 353, at 67.

387. *Id.* at 68.

388. *Id.*

389. MYERS, *supra* note 374, at 126 (quoting Thomas Seward, *The Female Right to Literature, in a Letter to a Young Lady, from Florence, in A COLLECTION OF POEMS BY SEVERAL HANDS* 295-302 (London, R. Dodsley 1748)).

390. MYERS, *supra* note 374, at 127.

"Custom," implicitly rejecting any theory of women's natural inferiority.

The most important mid-century feminist work, the so-called "Sophia pamphlets," appeared in 1739. The first pamphlet, by "Sophia," was entitled *Woman Not Inferior to Man* and was based upon the progressive Poulain de la Barre's *L'Egalité des Deux Sexes* (1673; English translation 1677). This pamphlet was answered by "A Gentleman" in *Man Superior to Woman*, and Sophia replied in *Women's Superior Excellence Over Man*. The three pamphlets were reprinted in one volume, *Beauty's Triumph; or, the Superiority of the Fair Sex Invincibly Proved*, in 1751.³⁹¹ According to Ruth Perry, these pamphlets were "much discussed" when they appeared and were "very influential."³⁹² Although the Sophia pamphlets were published after Astell's influence had allegedly waned, Sophia's arguments precisely parallel Astell's. Sophia asserts that men and women are born with equal shares of Reason. She argues that through their own jealousy and fear of women, men have erected barriers to women's use of their Reason, primarily in the form of educational disadvantages that they defend on the basis of Custom. Noting the same vicious circle that Astell lamented, Sophia argues that men use women's apparent intellectual inferiority, which derives solely from their poor education, to justify their exclusion from the professions and public offices; then, in turn, men use women's exclusion from these roles to justify denying them an equal education. In fact, on this last point, Sophia is much more radical than Astell. Astell disavowed any advocacy of sexual equality in the professions, asserting that "Women have no business with the Pulpit, the Bar or St. Stephens Chapel . . ."³⁹³ Sophia, on the other hand, advocates women's entry into every realm of public and professional life other than the ministry, which she finds debarred to women by divine fiat.³⁹⁴

391. See BEAUTY'S TRIUMPH, *supra* note 367. One source identifies the reprinted version of the Sophia pamphlets as FEMALE RIGHTS VINDICATED: OR, THE EQUALITY OF THE SEXES MORALLY AND PHYSICALLY PROVED, printed in London in 1751. Ruth Perry, *Introduction to GEORGE BALLARD, MEMOIRS OF SEVERAL LADIES OF GREAT BRITAIN* 34-35 (Ruth Perry ed., 1985) (1752). Alice Browne, however, identifies it as BEAUTY'S TRIUMPH: OR, THE SUPERIORITY OF THE FAIR SEX INVINCIBLY PROVED, which was also printed in London in 1751. Browne explains that "*Female Rights Vindicated* uses some material from Sophia." ALICE BROWNE, *THE EIGHTEENTH CENTURY FEMINIST MIND* 202 n. (1987). I have seen both *Female Rights Vindicated* and *Beauty's Triumph*, and it is clear that *Beauty's Triumph* constitutes the reprint of the Sophia pamphlets. All quotations from the Sophia pamphlets throughout this Article are taken from *Beauty's Triumph*.

392. Perry, *supra* note 391, at 35.

393. ASTELL, *supra* note 345, at 123.

394. See BEAUTY'S TRIUMPH, *supra* note 367, at 50.

As might be expected, the discourse of Reason and Custom pervades *Beauty's Triumph*. Sophia accuses men of "prostituting reason to their groveling passions, suffering sense to be led away captive by prejudice, and sacrificing justice, truth, and honour to inconsiderate custom."³⁹⁵ She also refers to philosophers' "[i]gnorance, dignified with the prerogative of custom, and supported by the seemings of reason."³⁹⁶ Lamenting the power of Custom, she claims:

[S]uch is the prevalence, which custom . . . has over the minds of the *Men*, that it requires much less difficulty to wean them from sentiments, which they themselves have built on the most convincing evidences of *reason* and *truth*, than to draw them from the *prejudices* which *custom* has instill'd into them.³⁹⁷

Continuing this theme, Sophia alleges that men have been "hood-wink'd by custom."³⁹⁸ Because of Custom they are unable to envision women filling the offices of general, judge, or professor: "[S]o weak are their intellectuals, and so untuned are their organs to the voice of reason, that custom makes more absolute slaves of their senses than they can make of us."³⁹⁹

Sophia challenges men to prove that their "monopoly" on the "advantages of education and learning" is "grounded on reason,"⁴⁰⁰ condemning them for maintaining the circularity that Astell noted half a century earlier: "Their cowardice then in excluding us from the sciences is nothing inferior to their insolence in upbraiding us with the want of them. They first make laws and customs to deprive us of learning, and then blame us for ignorance."⁴⁰¹ For Sophia, as for the early eighteenth-century feminists, Custom becomes a juggernaut, carrying all before it. She refers to it as "custom, ever prevailing custom."⁴⁰² She proclaims that men's usurpation of women's original right to equality has been "hardened by custom into tyranny."⁴⁰³ Most poignantly, she recalls that women who have excelled in learning had first to "renounc[e] the

395. *Id.* at 3.

396. *Id.*

397. *Id.* at 6.

398. *Id.* at 219.

399. *Id.* at 37.

400. *Id.* at 182.

401. *Id.* at 271.

402. *Id.* at 4.

403. *Id.* at 175.

pleasure and indolence to which cruel custom seem'd to condemn them."⁴⁰⁴

Predictably, in response, the author of *Man Superior to Woman* refutes each of Sophia's points. Most fundamentally, he cites the creation story in the second chapter of *Genesis* to argue that women do not share equally with men in Reason. Referring to women's being crafted from Adam's rib as their "semi-creation,"⁴⁰⁵ he calls women "mere half-creatures."⁴⁰⁶ Given this view of women's origin, it is not surprising that the author argues women's deficiency in Reason. He refers to "the little glimmering of reason, which heaven bestowed on them out of compassion to us."⁴⁰⁷ The most he will allow is that "there are *Women* . . . who can try to reason; and almost succeed in it."⁴⁰⁸ Promising that his argument will not be difficult, in deference to "the weakness of their [women's] intellects, which seldom can reach higher than a head-dress," the author pledges, "I shall do my utmost to make *Reason* stoop to their comprehension, by confining myself entirely to their sphere."⁴⁰⁹

In addition to arguing that women's subordination is justified by their defective creation and deficient Reason, the author also argues that Custom serves as justification for women's subordination because, in this respect, Custom is based upon Reason. To support his argument, the author adduces two pieces of evidence: the universality of women's subordination, and women's consent to it:

For it cannot without rashness be doubted, but that mankind being rational creatures, and therefore not only directed, but even of themselves inclined, to do nothing without reason, they must have consulted reason for the introduction of such practices as have been universally received by both sexes, in all places, and at all times. . . .

. . . .

. . . [S]ince both sexes from the creation unanimously established this practice, and handed it down thro' all ages to our own, it is the height of temerity to impute the power of the *Men*

404. *Id.* at 44.

405. *Id.* at 103.

406. *Id.* at 94. This link between women's subordination and the account of Creation in the second chapter of *Genesis* represented a well-recognized position in early Christian philosophy. See generally TUANA, *supra* note 344, at 3-12, 56-57.

407. BEAUTY'S TRIUMPH, *supra* note 367, at 74.

408. *Id.* at 115.

409. *Id.* at 80.

over the *Women* to inconsiderate *custom* or to any cause inferior to *reason* and *prudence*.⁴¹⁰

Thus, Sophia's adversary throws her argument into bright relief by contesting it on the most fundamental grounds: the nature of woman's very creation, the equality of her capacity for Reason, and the role of man-made Custom in creating and maintaining women's subordination.

In response, Sophia refutes her adversary's fundamental position, that women's subordination is both divinely authorized and based upon nature and Reason.⁴¹¹ She ridicules his argument from *Genesis* by proposing an alternative reading:

Man being form'd a mere rough draught of that finish'd creature *Woman*, GOD snatch'd from the lumpish thing the few graces and perfections he found in it, to add them to the many he design'd to enrich her with. And if he did entail upon her a rib of that stupified mortal, it was out of pure pity to him, that *Woman* bias'd by the sympathetic tie might with less repugnance stoop her exalted Soul to some regard for him.⁴¹²

With respect to the positive laws that underlie and reinforce women's subordination, Sophia points out that men "foolishly conclude that nature had a hand in the framing those laws which exclude us from power, dignities, and public offices."⁴¹³ She argues, however, nature could not have "impower'd the *Men* to make such laws without consulting the *Women*! The *law-givers* were *Men* themselves; and therefore no wonder they should favour their own sex."⁴¹⁴ Thus, through examining the literally man-made origin of secular law regarding women, Sophia once again places those laws in the realm of Custom rather than Reason: "Dependence in itself is a mere civil restraint introduced by chance, force, or custom, and ought rationally to affect none but children"⁴¹⁵

Interestingly, given her recognition that lawmaking has been the exclusive province of men, throughout her two treatises, Sophia uses legal metaphors to describe her endeavor. In the first part of her work, she likens her effort to a trial of the question whether

410. *Id.* at 84-85.

411. *See id.* at 184-89.

412. *Id.* at 187.

413. *Id.* at 219-20.

414. *Id.* at 220.

415. *Id.*

"Men are really superior to Women, and [whether] the dependence we now are in is the very state which nature pointed out for us."⁴¹⁶ In the first extended metaphor, Sophia, placing herself in the role of women's advocate, declares that her only witness will be the "unquestionably impartial" one of "plain *undisguised truth*."⁴¹⁷ Having settled the matter of witnesses, she faces the most difficult question: "But who shall the matter be tried by?"⁴¹⁸ Recognizing that both women and men "are too nearly concern'd in the decision, to be admitted even as witnesses in the trial, much less as judges of the cause,"⁴¹⁹ she appeals to the very quality that she is claiming for women. The only "*impartial judge*," she concludes, is "*rectified reason*," a "pure intellectual faculty, elevated above the consideration of any sex."⁴²⁰ Finally, and most radically, she asks, "But what if we obtain a decree in our favour, upon impartial examination?"⁴²¹ In that case, she declares, "all the authority, which the Men have exerted over us hitherto, will appear an unjust usurpation on their side; for which nothing can make a tolerable atonement, but their restoring us to the state of equality *nature* first placed us in."⁴²²

It is ironic, of course, that the judge itself (Reason) cannot be counted on to execute the decree; instead, any decree for Woman must be carried out by the very offender, Man. Somehow, Sophia is arguing, men, when convicted of their error by Reason, will recognize Custom as an "unjust usurpation" and will conform their behavior to nature by "restoring" women to equality. The radical suggestion that women should be restored to equality is diluted by the implicit recognition that only men themselves have the power to change the status of women, and the hopelessly optimistic prediction that they will do so.

By establishing this legal metaphor early in her work, Sophia demonstrates her access to legal discourse and claims for herself the authority of a male participant in the English legal system. But she also places her faith in a male-created, male-maintained system for determining truth, seeming to align that system with the exalted realm of Reason rather than the debased realm of Custom. In the second of her treatises, she employs, not a *procedural* legal

416. *Id.* at 6.

417. *Id.* at 7.

418. *Id.*

419. *Id.*

420. *Id.* at 9.

421. *Id.*

422. *Id.*

metaphor, the trial, but a *substantive* one, title by prescription, in refuting her adversary's argument that women, as they *are*, prove that women *cannot be* equal to men. First, addressing the male author's invocation of Aristotle, she notes, "When this philosopher says then that *Women* are unfit and want judgment to govern . . . he must mean it only of *Women*, consider'd in their then and now present circumstance of ineducation."⁴²³ Later she elaborates on the nature and implications of women's "present circumstance of ineducation":

[S]uch is the unjust partiality of the *Men* to the blockheads of their own, that all the advantages of education are wholly reserved for them. The greatest care is taken to form and improve their minds; and the poor *Women* are left to loiter away life in indolence and ignorance⁴²⁴

Having established the contrast between men's and women's education, Sophia concludes, "'tis a greater wonder that there ever should have been one learned *Woman*, than it would have been had all the *Men* been so, if we do but consider the inequality of education given to the two sexes."⁴²⁵ She then addresses the significance of the long duration of women's subordination and the propriety of seeking to overthrow the established order:

It has been deem'd necessary for the security of contracts and the peace of families, that such as with a good conscience have been in a long and immemorable possession of the goods of fortune should not be liable to the disturbance of afterclaims. But it never was heard of that a person, who, by ignorance, neglect, or the surprise of others, has fallen from his just right, may not try all lawful means to recover his property; and his incapacity of possession was never consider'd as natural but only civil.⁴²⁶

Several points are noteworthy here. First is the hint, embodied in the phrase "such as with a good conscience," that men may not be qualified to defend their "immemorable possession" of education, the professions, and public office; they may not be able to establish that they have engrossed these things to themselves "with a good conscience." Sophia analogizes worldly opportunity and intellectual

423. *Id.* at 234.

424. *Id.* at 253.

425. *Id.* at 268.

426. *Id.* at 269-70.

capacity, as improved by education, to "goods of fortune," underlining her insistence that women's present state of ineducation is the product of culture, not nature. Paralleling her earlier assertion that men will be forced to "restore" women to their natural state, she analogizes women to the person who originally had possession of property but, through no fault of his own, "has fallen from his just right." Thus, Sophia transforms the concept of the "fall": instead of bringing about the Fall from a state of grace to a state of sin, women have suffered a fall from rightful possession of intellectual equality and its concomitant opportunities to unlawful exclusion from the means of maintaining that equality. The post-fall state of woman is only "civil," that is, man-made, not "natural," decreed by God. Natural states are immutable; civil states are remediable. Because women's state of dispossession is merely civil, they can try "all lawful means to recover" their original status of equality.

One problem with Sophia's analogy here is that restoration of the original owner requires ouster of the usurper. Under this analogy, for women to recover their property means that men will lose theirs. Another problem is that, in the law, long possession may indeed trump original right. That is, even when the dispossessed person can show an original right to the property and ouster through no fault of her own, the law may choose to promote the policy of settled title over the policy of restoration of rights.⁴²⁷ Therefore, Sophia shifts the argument slightly to contrast intellectual equality with earthly property:

As the same goods of fortune cannot at once be possess'd by different persons, it is reasonable to maintain the actual possessors of them with a good conscience in possession of them, to the prejudice of very ancient proprietors. But it fares not thus with the goods of the mind: against them there can be no prescription; but however long we have been excluded from them, our right of *Replevin* continues inalienable. Every rational being has a right to good sense, and all that is intelligible. Reason is absolutely unlimited in her jurisdiction over mankind; we are all born to judge of what concerns and affects us, and if some cannot use the objects of sense with the same facility as others, all have an equal right to them. . . . Knowl-

427. The modern doctrine of title by adverse possession is based upon this principle of protecting the possessor at the expense of the owner. See generally 2 POLLOCK & MAITLAND, *supra* note 56, at 40-42. This doctrine was recognized in England from an early date; in early modern England, the doctrine was embodied in the Statute of James, 1623, Jam., ch. 16 (Eng.), which established a twenty-year adverse possession period.

edge and truth then are goods exempted from any prescription, and consequently so are the sciences by which they are to be attain'd! So that such of our sex as have been deprived of them hitherto have a right of re-entry without any injury to those *Men* who are in possession of them.⁴²⁸

With this analysis, Sophia solves both of the problems with her legal metaphor. First, by asserting that "against [the goods of the mind] there can be no prescription," she refutes any argument that men's long possession of intellectual opportunities should trump women's original, but long dormant, claim to them. Women, Sophia asserts, have an "inalienable" right of "*Replevin*." Of course, the reference to "inalienable" rights reminds post-Jeffersonian readers of the Lockean discourse of the American Declaration of Independence.⁴²⁹ When a right is inalienable, it *cannot* be given up, even if the possessor wishes to relinquish it. Sophia is saying that, no matter how women of the past or present acted with respect to their right to intellectual equality, no matter how much they may have acquiesced, or may still acquiesce, in its exclusive exercise by men, they did not and do not have the power to alienate, to give away, this right. Women have never relinquished their right to recover their natural status of equality.

Most interesting here, however, is Sophia's assertion that women have a "right of *Replevin*," for replevin was a very specialized type of legal action. It was a remedy for "[t]he wrongful taking of goods."⁴³⁰ Replevin was a specialized action because the plaintiff received, not the monetary value of the goods wrongfully taken, but the actual restitution of the goods themselves.⁴³¹ Furthermore, according to Blackstone, replevin was available "only in one instance of an unlawful taking, that of a wrongful distress."⁴³² A distress, in turn, was a self-help remedy employed by a person who believed himself wronged; it consisted of the wronged party's unilateral seizure of some of the wrongdoer's goods.⁴³³ The most common example of distress was a landlord's seizure of his tenant's

428. BEAUTY'S TRIUMPH, *supra* note 367, at 270-71.

429. "WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain *unalienable* Rights, that among these are Life, Liberty, and the Pursuit of Happiness." THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added).

430. 3 BLACKSTONE, *supra* note 66, at *145.

431. *See id.*

432. *Id.* at *145-46.

433. *See id.* at *6.

goods for unpaid rent.⁴³⁴ Once the landlord seized the goods, they were in his possession, but were considered *in custodia legis* because the landlord had to stand ready to return the goods to the tenant once the tenant paid the rent that was owed.⁴³⁵ Because the goods were *in custodia legis*, as well as in the landlord's possession, the wronged tenant could not use self-help to retake the goods, but must resort to a legal procedure, replevin.⁴³⁶

These features of replevin make it perfect for Sophia's purposes: women have been wrongfully dispossessed of their rights to enjoy the fruits of Reason; the dispossessors, men, acted not through a legal procedure, but solely through self-help. Therefore, at any time during men's unlawful possession of these rights, they can be called upon to return them. Interestingly, again, Sophia equates men's wrongful seizure of women's original rights with oppression, with means not legally sanctioned, and with Custom, while arguing that women's rights will be vindicated through their resort to legal institutions via the action of replevin. Moreover, the concept that women's original rights, while wrongfully dispossessed by men, have been *in custodia legis* implicitly associates the protection of law with the realm of Reason.

Sophia's explicit invocation of Reason in this passage modulates from Reason as the judge in a trial of human institutions to Reason as the judging faculty in each individual. In her depiction of Reason as judge, Sophia asserts Reason's "absolutely unlimited . . . jurisdiction" over all people.⁴³⁷ The concept of "jurisdiction" is a subtle one; it implies both power on the part of the court to compel a person to subject himself to its decrees, as well as the court's duty to hear the claims of that person. In other words, just as a person within a court's jurisdiction must respond when summoned, so must a court respond when presented with a controversy within its jurisdiction. Thus, in Sophia's metaphor, all persons are subject to the demands and dictates of Reason; but at the same time, all persons have the right to appeal to Reason to adjudicate their claims. Figuring Reason as a judge, Sophia continues her earlier identification of "rectified reason" as the judge of her cause. Furthermore, the concept of "absolutely unlimited" jurisdiction intensifies the exaltation of Reason, for all man-made courts have only limited jurisdiction.

434. *See id.*

435. *See id.* at *146; 2 POLLOCK & MAITLAND, *supra* note 56, at 576.

436. *See* 3 BLACKSTONE, *supra* note 66, at *146-47; 2 POLLOCK & MAITLAND, *supra* note 56, at 576-77. In this paragraph I am indebted to comments from Michael H. Hoffheimer.

437. *See* BEAUTY'S TRIUMPH, *supra* note 367, at 270.

The unlimited jurisdiction of Reason, which makes it absolutely open to the claims of all, also helps Sophia explain how women's recovery of their rightful property will not oust men of theirs. What women seek, the fruits of Reason ("[k]nowledge and truth") and the means of attaining them, are not limited commodities. Women's repossession of these goods will not require men's dispossession. "Good sense" and "all that is intelligible" are, like Reason's jurisdiction itself, unlimited in supply. If, because of their present state of ineducation, some women and even some men (implicated by her use of the gender-neutral pronoun "some") do not have the same "facility" in using these qualities as do others, that inability does not diminish their possessory right.

Even in the face of claims that Astell had no successors later in the eighteenth century, we see here in the second quarter of the century a very powerful argument embodying virtually all of Astell's fundamental premises and even going beyond Astell in rhetorical sophistication.⁴³⁸ Whether Sophia knew the works of Mary Astell or not, she framed her argument in the same terms, pitting the liberating force of Reason against the repressive tyranny of Custom.

From John Locke to Mary Wortley Montagu to Sophia, Custom and Reason meant the same things that they meant to Mary Astell. Custom was the force of tradition, of social construction, of the already-established; Reason represented the force of original natural rights, of liberatory potential. In the terms of satire, discussed earlier, Custom represented what *was*; Reason represented what *should be*. The negative qualities with which women were charged were attributed to Custom. Their potential for improvement, especially intellectual improvement, was linked to their capacity for Reason. This dichotomy and the ways in which feminists had used it were well established within eighteenth-century culture by the time Lennox composed *The Female Quixote*.

438. I disagree with Alice Browne, who describes the Sophia pamphlets in the following way:

An English trilogy, by a writer using the pseudonym Sophia, uses Poulain's structure and some of his material, but negates its seriousness by lightening the tone, concentrating on character sketches of male and female fools, and concluding with a traditional praise of women's superiority because of their beauty and wit.

BROWNE, *supra* note 391, at 123. True, in the third part of the trilogy, Sophia unfortunately accepts her opponent's terms of battle, presenting character sketches of learned and virtuous women to counter his satirical portraits. The first part of the trilogy is not marred by this method, however, and the strength and subtlety of Sophia's legal metaphors alone (the only part of her work I examine in detail here) qualify *Beauty's Triumph* as the most important mid-eighteenth-century feminist work in English.

Any invocation of the terms within the novel would necessarily have been understood by her and her readers within the context of this preexisting discourse. Arabella's allegiance to Custom, in the form of the romances, is satirized; as an adherent of Custom, she partakes of the limitations imposed on eighteenth-century women. Arabella's access to Reason, demonstrated by her reasoning powers and her ability to engage in serious discourse, is celebrated; she represents the potential of all women, once they are freed from debilitating Custom. The feminist discourse of the Reason vs. Custom dichotomy provided Lennox with a representation of Woman as both "enlighten'd and ridiculous," a representation that could bear the quixotean burden of simultaneous celebration and ridicule.

C. *The Female Quixote as the Woman of Reason*

In her portrayal of Arabella, Lennox engages the same issues that preoccupied the early eighteenth-century feminists: the equality of male and female intellect, the necessity of a proper education for women, and the tyranny of Custom. Lennox takes pains to establish Arabella's mental as well as physical beauty. The Marquis takes charge of her education in order to "render her Mind as beautiful as her Person was lovely."⁴³⁹ Arabella is continually praised for her "fine Sense"⁴⁴⁰ and the "Strength of her Understanding";⁴⁴¹ in Glanville's opinion, she has "more Wit than her whole Sex besides."⁴⁴² Throughout the novel, running as a strong counter-current against Arabella's romantic misinterpretations, is her participation in the feminists' favorite pastime, "rational conversation."⁴⁴³ Her conversation, on subjects other than the romances, is "fine, easy, and entertaining";⁴⁴⁴ Miss Groves finds her "refined" discourse "tedious," since it is "neither upon Fashions, Assemblies, Cards, or Scandal."⁴⁴⁵ At the dinner party with Sir George Bellmour, Arabella "mixe[s] in the Conversation with that Wit and Vivacity which was natural to her."⁴⁴⁶ Sir Charles opines that she "sometimes talk'd as learnedly as a Divine."⁴⁴⁷

439. LENNOX, *supra* note 200, at 6.

440. *Id.* at 61, 64.

441. *Id.* at 116.

442. *Id.* at 41.

443. MYERS, *supra* note 374, at 8, 80.

444. LENNOX, *supra* note 200, at 65.

445. *Id.* at 68.

446. *Id.* at 204.

447. *Id.* at 314.

Although we are told that “her whole Time [had] been taken up by [the] Study” of romances,⁴⁴⁸ the narrative repeatedly suggests that she also found more substantial material in her father’s library.⁴⁴⁹ Even before her conversion, Arabella is depicted as a suitable conversational companion to Glanville. At one point, discussing the upcoming races with Charlotte, Arabella refers to Alcibiades’ triumphs at the Olympic games, prompting Glanville to intervene and “turn[]” the conversation to “the *Grecian* History.”⁴⁵⁰ While Charlotte “hum[s] a Tune, and tinkl[es] her Cousin’s Harpsichord,” Arabella and Glanville engage for two hours in “the more rational Entertainment” of conversation.⁴⁵¹ All the evidence in this passage — the fact that Glanville changes the subject from a romantic to a historical one, the fact that the conversation is described as “rational” and is “unintelligible”⁴⁵² to Charlotte, and the duration of the conversation, with no hint of impatience or exasperation on Glanville’s part — indicates that Arabella can converse engagingly on serious topics. Although this particular conversation is not quoted, we do read two of Arabella’s Johnsonian disquisitions: her condemnation of raillery⁴⁵³ — which prompts Sir Charles to tell her, “[Y]ou speak like an Orator”⁴⁵⁴ — and her declamation on Indifference.⁴⁵⁵ Arabella’s conversational powers represent the tantalizing potential of women’s rationality and the benefits to men, in terms of intellectual companionship, that would follow from educating women properly.

Arabella also represents the deleterious effects of an adherence to Custom, the great enemy of society’s recognition of women’s rational equality. Arabella is ruled by Custom. She recognizes the “Authority of Custom”;⁴⁵⁶ she honors the “Custom” of the maid’s relating the heroine’s history;⁴⁵⁷ and she wonders why her suitor does not follow the “Custom” of leaving a letter on her table before his departure.⁴⁵⁸ Arabella wears a veil at Bath because that is “the Custom of the Ladies in *Clelia*, and the *Grand Cyrus*.”⁴⁵⁹ Her inappropriate request to the Countess “to favour her with the

448. *Id.* at 7.

449. *See id.*

450. *Id.* at 83.

451. *Id.*

452. *Id.*

453. *See id.* at 267-69.

454. *Id.* at 269.

455. *See id.* at 311.

456. *Id.* at 44.

457. *Id.* at 69.

458. *See id.* at 118.

459. *Id.* at 263.

Recital of her Adventures" is "grounded upon the Customs of antient Times."⁴⁶⁰ Custom both dictates and constrains Arabella's actions, and since the Custom she relies upon derives from the romances, her resulting actions are outlandish.

By making Arabella a slave to Custom, Lennox makes not just a procedural point about the precedential mode of reasoning but also a substantive point about the source of women's legal subordination. Eighteenth-century legal writers asserted that English common law was, simply, Custom.⁴⁶¹ Sir Robert Chambers, who was assisted by Johnson in writing *A Course of Lectures on the English Law*, states, "The common law, in its strict acceptation, consists of customs derived from immemorial tradition, and of maxims established by immemorial practice."⁴⁶² In the *Commentaries*, Blackstone first divides English law into "*lex non scripta*, the unwritten, or common law" and the "*lex scripta*, the written, or statute law."⁴⁶³ The *lex non scripta* "includes not only *general customs*, or the common law properly so called; but also the *particular customs* of certain parts of the kingdom."⁴⁶⁴ Like the "antient" customs of Arabella's romances, only customs that had "been used time out of mind" could constitute the common law.⁴⁶⁵ Customs were given "weight and authority" only by the inability of living persons to remember when they were not observed, or when, in Blackstone's phrase, "the memory of man runneth not to the contrary."⁴⁶⁶

The recognition of a custom as part of English common law was accomplished when a judge declared what the common law was.⁴⁶⁷ Still, Blackstone insisted, these judicial decisions were not the law itself, but only *evidence* of the common law.⁴⁶⁸ Despite this insistence, however, Blackstone also advocated the doctrine of *stare decisis*:

[I]t is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with

460. *Id.* at 327.

461. See *infra* text accompanying notes 463-65.

462. 1 CHAMBERS, *supra* note 65, at 116.

463. 1 BLACKSTONE, *supra* note 66, at *63.

464. *Id.*

465. *Id.* at *67.

466. *Id.*

467. See DAVID LIEBERMAN, *THE PROVINCE OF LEGISLATION DETERMINED: LEGAL THEORY IN EIGHTEENTH-CENTURY BRITAIN* 44-45 (1989).

468. See *id.* at 44-45, 85-86; see also Whitman, *supra* note 366, at 1360-61 (describing common law as merely a product of custom).

every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule⁴⁶⁹

Change was what the early eighteenth-century feminists advocated, and change was what the "permanent rules" resulting from reliance on "former precedents" prevented. As one legal historian notes,

[F]rom the end of the thirteenth century to the beginning of the nineteenth, legislation played a tiny part in the development of private law. Nearly all of it was done in the courts; and judges do not, as does Parliament, make avowed changes in the law in response to argument about social needs. They do not make avowed changes at all; and that is the point.⁴⁷⁰

The static nature of the common law allowed the past to rule the present, just as Arabella's romances ruled her life. As Mary Astell exclaimed, "Men are possessed of all Places of Power, Trust and Profit, they make Laws and exercise the Magistracy Immemorial Prescription is on their Side in these Parts of the World, antient Tradition and modern Usage!"⁴⁷¹ The same criticism could be made of the common law's reliance on precedent as Glanville makes of Arabella's reliance on romances: "[D]o not suffer yourself to be governed by such antiquated Maxims! The World is quite different to what it was in those Days" ⁴⁷² The continued tyranny of Custom over women's legal existence was ensured because English common law was self-replicating and based upon Custom.

In view of the common law's hostility to "avowed changes," Custom was a conservative, backward-looking force. If Lennox's novel were merely an apologia for the established patriarchal order, we would expect Arabella's allegiance to this force to be lauded, but clearly it is not. Her adherence to Custom is part of the "ridiculous" aspect of her character. As we have seen, the novel presents Arabella's reasoning powers as the "enlighten'd" part of her character. But, in one of the novel's marvelous subtleties, the disruptive potential of female Reason is fully acknowledged. As Blackstone points out, the chain of common-law precedent can be broken if a prior ruling is determined to be "contrary to reason."⁴⁷³

469. 1 BLACKSTONE, *supra* note 66, at *69.

470. S.F.C. Milsom, *Reason in the Development of the Common Law*, 81 LAW Q. REV. 496, 497 (1965).

471. ASTELL, *supra* note 350, at 123.

472. LENNOX, *supra* note 200, at 45.

473. 1 BLACKSTONE, *supra* note 66, at *69.

Reason can thus trump Custom and disrupt the stability of settled precedent. In the domain of eighteenth-century law, power was exercised only by men. Therefore, the disruptive potential of Reason was contained within the homogenous group who instituted, maintained, and benefitted from Custom. The situation would be much different, however, if women were allowed to exercise Reason.

The early eighteenth-century feminists clearly saw that men would feel threatened by women's effort "to break the enchanted Circle that custom has plac'd us in."⁴⁷⁴ Astell mused, "I know not how the Men will resent it to have their enclosure broke down, and Women invited to taste of that Tree of knowledge they have so long unjustly *Monopoliz'd*."⁴⁷⁵ In "The Emulation," Egerton is more certain about both the threat and men's reaction to it:

They're Wise to keep us Slaves, for well they know,
If we were loose, we soon should make them, so.⁴⁷⁶

Clearly, in her eagerness to enact her romantic interpretations, Arabella is a threatening figure. Glanville recognizes early on that "his Happiness depended upon curing her of her romantic Notions,"⁴⁷⁷ and as the novel continues, he grows increasingly exasperated with her, at Vauxhall becoming "mad with Vexation."⁴⁷⁸ Although Glanville's sentiments are attributed to embarrassment at others' reactions to Arabella,⁴⁷⁹ the vehemence of his emotions suggests that she poses a greater threat than just embarrassment.

Katherine Sobba Green characterizes *The Female Quixote* as a "courtship novel," which she defines as "centering its story in the brief period of autonomy between a young woman's coming out and her marriage."⁴⁸⁰ But *The Female Quixote* actually engages Arabella's story prior to her coming out in Bath and London, and although Arabella exercises epistemological autonomy, she has in fact no legal autonomy at all. Throughout the novel, she is a minor, under her father's guardianship until his death, when she becomes her uncle's ward.⁴⁸¹ Arabella does not pose the same sort of threat to the established order as does Clarissa Harlowe. Both women

474. ASTELL, *supra* note 345, at 3.

475. *Id.* at 20.

476. Egerton, *supra* note 357, lines 13-14.

477. LENNOX, *supra* note 200, at 117.

478. *Id.* at 336.

479. *See, e.g., id.* at 303, 336.

480. KATHERINE SOBBA GREEN, *THE COURTSHIP NOVEL 1740-1820: A FEMINIZED GENRE* 2-3 (1991).

481. LENNOX, *supra* note 200, at 59-65.

benefit from their male progenitors' wills,⁴⁸² and both women are minors and thus cannot dispose of their property.⁴⁸³ Yet, unlike the threat posed by Clarissa's accession to wealth, the threat Arabella poses seems to derive less from what she *has* than from what she *is*.

Lennox repeatedly emphasizes Arabella's "Singularity," the "Singularity of her Dress,"⁴⁸⁴ the "Singularity of her Manners,"⁴⁸⁵ and the "Singularity of her Notions."⁴⁸⁶ Johnson's final definition of "singularity" is "[c]haracter or manners different from those of others";⁴⁸⁷ the corresponding definition of the adjective "singular" is "[h]aving something not common to others. It is commonly used in a sense of disapprobation, whether applied to persons or things."⁴⁸⁸ It is surely in the disapprobatory sense that Paulson characterizes Arabella as a "monster of . . . self-sufficiency."⁴⁸⁹ Because she does not share the common view of reality, because she employs her own "frame of reference,"⁴⁹⁰ Arabella is both singular and self-sufficient. Her view of the world, while flawed, is authentic, based on her best assessment of her situation. The authenticity, the sincerity, the very transparency of Arabella's interpretations contribute to the sympathy with which she is portrayed. As Deborah Ross points out, "[a]ny romance heroine has power simply by virtue of her role" and "the reader cannot avoid feeling that Arabella, who is supposed to be wrong, is actually right, because this is her story."⁴⁹¹ But Arabella's power derives not merely from her status as heroine; instead, she embodies the paradox of undernourished Reason. Although the substance of her views is wrong, the quality that inheres in her ownership of those views — her interpretive autonomy — is presented as valuable.

Ultimately, however, the threatening aspect of her mental powers becomes dominant and must be subdued. The individualistic light in which Arabella sees things simply cannot be tolerated. Arabella's interpretations place "*common Occurrences . . . in a new*

482. See *id.* at 64; RICHARDSON, *supra* note 117, at 53-54.

483. See LENNOX, *supra* note 200, at 64-65; JOHN P. ZOMCHICK, FAMILY AND THE LAW IN EIGHTEENTH-CENTURY FICTION: THE PUBLIC CONSCIENCE IN THE PRIVATE SPHERE 64-66 (1993).

484. See LENNOX, *supra* note 200, at 8, 263, 334.

485. *Id.* at 197.

486. *Id.* at 323.

487. JOHNSON, *supra* note 116.

488. *Id.*

489. PAULSON, *supra* note 201, at 276.

490. Sloman, *supra* note 204, at 99.

491. Ross, *supra* note 213, at 461.

Light.”⁴⁹² Although this new light may be beneficent, as it is when Arabella views Miss Groves in a “favourable Light,”⁴⁹³ the new light must be extinguished because it is not sanctioned by the community. Arabella attempts to do what Lorraine Code says is impossible even for modern women: to “act according to her own lights, with the full authority of a competent knower, in the expectation of public acknowledgment.”⁴⁹⁴

Arabella’s monstrous singularity, the new light that she sheds on her world, is merely symptomatic of the power of the new Cartesian “*subjectivity* — the capacity of the knower to bestow false inner projections on the outer world of things.”⁴⁹⁵ The danger of individual misinterpretation of reality is endemic to the Cartesian model of knowledge. If, as Locke claimed, each person gains his or her knowledge solely from his or her own “Sensation” and “Reflection,”⁴⁹⁶ then what is to prevent each person from slipping into complete solipsism? What is to hold the community of knowers together? Locke gave a commonsense answer: “Experience and Observation.”⁴⁹⁷ The usefulness of experience as a touchstone for communal truth, however, depends on the shared nature of experience, and Locke assumes that all knowers will share a homogenous experience.⁴⁹⁸ As *The Female Quixote* demonstrates, however, human experience is not homogenous; Arabella acts perfectly reasonably given her experience. The failure of experience in Arabella’s case challenges Cartesian faith in the possibility of shared knowledge.

In fact, Arabella exposes an important fissure in Cartesian epistemology: its gender assumptions. As Code notes, in the classic epistemological formula, “S knows that P,” the sex of the knower has not been addressed by traditional philosophers, at least in part because an admission that the sex of the knower might matter would challenge the Cartesian assumption that “all knowers are . . . alike with respect both to their cognitive capacities and to their methods of achieving knowledge.”⁴⁹⁹ Also, Code points out, if the sex of the knower affects the quality of the knowledge, then that knowledge cannot be “objective” and, therefore, is deemed less valu-

492. LENNOX, *supra* note 200, at 65.

493. *Id.* at 77.

494. CODE, *supra* note 2, at 188.

495. SUSAN BORDO, *THE FLIGHT TO OBJECTIVITY: ESSAYS ON CARTESIANISM AND CULTURE* 51 (1987).

496. LOCKE, *supra* note 279, bk. II, ch. 1, §§ 3, 4, at 105.

497. *Id.* at bk. I, ch. 4, § 25, at 102, 103, *passim*.

498. See, e.g., *id.* at bk. I, ch. 4, § 12, at 91; *id.* bk. II, ch. 1, § 9, at 108-09.

499. CODE, *supra* note 2, at 6.

able.⁵⁰⁰ Despite this reluctance to address explicitly the sex of the knower, Code argues, "it has long been tacitly assumed that S is male."⁵⁰¹ Concomitantly, traditional epistemology has consigned women to the subordinate axis of the Objective/Subjective dichotomy:

[W]omen are often (albeit perhaps unthinkingly) consigned to an insignificant place in a community of knowers on the basis of claims that *their* 'knowledge' is hopelessly subjective. Such claims are commonly based on women's purported incapacity to rise above the practical, sensuous, and emotional preoccupations of everyday life. Hence women are judged unfit for the abstract life of pure reason in which true knowers must engage.⁵⁰²

As long as only objective knowledge is highly valued and as long as women's claims to knowledge are perceived as subjective, women's "deliberative faculty" will be "without authority."⁵⁰³

Arabella illustrates this point precisely. Her experience fails to regulate her interpretations because it is substantively different from the male experience posited as normative. Her inadequate education, coupled with her reasoning powers, makes her the epitome of subjectivity: her view of the world is shared by no one else. Arabella represents the shadow lurking behind the Cartesian image of the mind. Once granted equal powers of Reason, women would also exercise subjectivity, the power of interpreting their world. And because they did not share the normative male experience, their knowledge was dangerous to the community and was, concomitantly, devalued. Thus, the early eighteenth-century feminists linked their claims to Reason with pleas for better education for women. A better education, one based on the classics, not on plays and romances, would restrain women's subjectivity, would allow them to partake of male experience, and would enable them to join the community of authoritative knowers.

500. See *id.* at 6-7.

501. *Id.* at 8.

502. *Id.* at 28-29.

503. *Id.* at 9 (quoting ARISTOTLE, *Politics*, in THE BASIC WORKS OF ARISTOTLE 1260 (Richard McKean ed. & Benjamin Jowett trans., 1941)).

V. CONCLUSION

A.

Sir Charles . . . express'd much Admiration of her Wit, telling her, if she had been a Man, she would have made a great Figure in Parliament, and that her Speeches might have come perhaps to be printed in time.⁵⁰⁴

Sir Charles' compliment to Arabella, made after her declamation on Indifference, assumes the separation of mind and body that underlay the eighteenth-century feminists' arguments. Arabella's "Wit," her mind, qualifies her for public service; it is only her body, her femaleness, that disqualifies her. To "ma[k]e a great Figure in Parliament," Sir Charles realizes, it is necessary to have a male body. The use of the conditional ("if . . . she would have") marks his recognition of the contrary-to-fact nature of his suggestion. No matter how admirable her intellect, Arabella cannot change the sex of her body. Her femaleness ensures that her speeches, the products of her mind, will remain ephemeral and will not be preserved for posterity.

Sir Charles' invocation of the mind/body dichotomy echoes earlier references in the novel. We have already seen that the Marquis recognizes the dichotomy: by educating her, he hopes to "render her Mind as beautiful as her Person was lovely."⁵⁰⁵ Later, Selvin tells her, "[Y]ou as much excel [Princess Julia] in the Beauties of your Person, as you do in the Qualities of your Mind."⁵⁰⁶ However, Sir Charles' remark does much more than assert that Arabella's strong intellect is uncontaminated by her womanly body; it imagines a woman as citizen, a role denied her in eighteenth-century England. As Linda Colley puts it, "[A] woman could not by definition be a citizen and could never look to possess political rights."⁵⁰⁷ As we have already seen, suffrage and the right to serve on juries were linked. Arabella, as imagined by Sir Charles here, would no longer be limited to service on the jury of matrons. If Sir Charles can envision Arabella as a *Member* of Parliament, then he can also envision her voting in Parliamentary elections and, by implication, serving on the jury. But are we, as readers, supposed to take Sir Charles seriously here?

504. LENNOX, *supra* note 200, at 311.

505. *Id.* at 6.

506. *Id.* at 272.

507. COLLEY, *supra* note 54, at 238.

Helen Thomson calls Sir Charles' exclamation "one of Charlotte Lennox's metafictional jokes."⁵⁰⁸ Another critic, Jocelyn Coates, describes Sir Charles' comment as "unusually strong praise for a woman in the eighteenth century. . . . [H]ere Arabella is the equal intellectually of men and is held back only by circumstance, not a lack of talent."⁵⁰⁹ Everything in the novel supports the view that Arabella's intellectual equality is praiseworthy, and certainly, the vision of Arabella as a Member of Parliament sounds like praise to modern women. However, the issue of public roles for women was controversial for eighteenth-century feminists. We have already seen that Mary Astell eschewed advocacy of public roles for women, while the more radical Sophia argued that women were capable of filling such roles.

The fact that it is Sir Charles who notes Arabella's political potential is significant because he is portrayed almost as a buffoon — certainly, as the least perceptive character in the novel. Congruent with the character of the speaker here, it seems likely that in the mid-eighteenth century, the suggestion that a woman might be qualified to serve in Parliament would not have been viewed seriously. The vicious lampooning of the Duchess of Devonshire for publicly campaigning for Charles James Fox in the Parliamentary election of 1784 illustrates the prevailing hostility to women's participation in the political process.⁵¹⁰ Even the Duchess of Devonshire, with all her financial and social resources, failed to surmount her status as a noncitizen: her "champions were unable to construct a satisfying way of legitimising and explaining her endeavours."⁵¹¹ Even a century later, in 1867, pamphleteers were still urging extension of the Parliamentary franchise (not the right to actually serve in Parliament) to women.⁵¹²

508. Helen Thomson, *Charlotte Lennox's The Female Quixote: A Novel Interrogation*, in *LIVING BY THE PEN: EARLY BRITISH WOMEN WRITERS* 113, 125 (Dale Spender ed., 1992).

509. Jocelyn Martha Coates, *The "Intellectual Entertainments" of Charlotte Lennox: Literary Strategies of an Eighteenth Century Professional Woman Writer* 182 (1992) (dissertation, University of Illinois at Urbana-Champaign).

510. See COLLEY, *supra* note 54, at 242-48.

511. *Id.* at 246.

512. See T. CHISHOLM ANSTEY, ESQ., *ON SOME SUPPOSED CONSTITUTIONAL RESTRAINTS UPON THE PARLIAMENTARY FRANCHISE* 10 (London 1867) ("It was a favourite argument with Lord Coke and his school, that those who could not sit in Parliament, had therefore no voice in elections to Parliament. The fallacy has long been exploded."); HELEN TAYLOR, *THE CLAIM OF ENGLISHWOMEN TO THE SUFFRAGE CONSTITUTIONALLY CONSIDERED* 9 (London 1867)

"For who else among us, entitled by law to hold property to a certain amount, is nevertheless deprived of the vote which the British Constitution looks upon as the safeguard of property? The answer will be — Minors, idiots, lunatics, and criminals. These, and these only, are classed politically along with women. But none of these are so classed in anything but in politics."

Nevertheless, Sir Charles' exclamation should also be read in light of the way in which the enlightened aspect of Arabella's intellect prefigures the intellectual potential of all women. Just as the novel implicitly critiques the limitation of women's participation in the interpretive community of the jury, so perhaps Sir Charles explicitly reminds us of another public arena that was closed even to intellectual women. His association of service in Parliament with Arabella's intellectual capacity, and his almost wistful recognition that her Johnsonian discourse will not survive, suggest that the vision of Arabella as a Member of Parliament has a more serious connotation, not just to modern readers, but within the context of contemporary feminist discourse. To see the still-romantic Arabella as a public officer may have been clownish, like Sir Charles himself,

Id. Helen Taylor's tract, especially, exposes the triumph of complementarity. She asks: Whence, then, comes this exception? Why, when they possess the necessary property, are women, alone among citizens of full age and sane mind, unconvicted of crime, disabled by a merely personal circumstance (that of sex) from exercising a right attached by our institutions to property and not to persons?

Id. at 10. She goes on to give an historical answer: "[D]uring the earlier period of our constitutional history, society was in so unsettled a state that women could not practically administer their own property, which led to women's not being included among the voters in the elections of members of Parliament." *Id.* Taylor pursues the incongruity of allowing women property ownership without permitting them the vote:

Many centuries elapsed after our electoral system had been brought into tolerably regular operation, before the progress of law and order enabled women, as a matter of course, to exercise openly the civil rights which the law attaches to property. It is in the natural course of things that now, after one or two centuries of the practical enjoyment of their civil rights, intelligent women begin to ask why the political rights should not accompany them.

. . . .
 . . . The English representative system, such as it is, good or bad, represents not persons but property. By holding property women take on the rights and duties of property. If they are not interested in politics, their property is.

Id. at 11-12. Taylor then addresses the primary objection of her audience, "the theory that 'all women are destined for family life.'" *Id.* at 13.

Whether or not all women are destined for family life, all Englishwomen do not live it; whether or not women are fitted by nature to be anything else than wives and mothers, many Englishwomen are something else; whether law ought or ought not to recognise women as anything else, the law of England does so recognise them. Marriage may or may not be the only good, the only ideal existence for all women; but the law of England has long ago refused to drive women into marriage, as sheep are driven into a fold, by shutting every gate against them but the one they are intended to go through.

Id. at 14.

Taylor's emphasis on Englishwomen's right to exercise the civil and political rights dependent on property would, of course, apply equally to jury service. And her refutation of her audience's anticipated objections to the extension of the franchise demonstrate that by the mid-nineteenth century, the "inferior intellect" theory had been abandoned in favor of the "separate spheres" theory.

in light of eighteenth-century reality, but to imagine a woman as a "Figure" in Parliament, with all the sexual resonance of that term, was merely a logical extension of the eighteenth-century feminists' vision of women's mental potential. True, women could not serve in Parliament until their femaleness no longer mattered; many social and legal changes would have to occur before a woman like Arabella could serve her country in a public role. But, just as the intrusion of the pregnant female body into the English courtroom created a fissure in monolithic male authority, so this image of Arabella as a Member of Parliament intrudes into the patriarchal discourse of the novel and forces the most patriarchal of characters to acknowledge the possibility of a public arena for women's power.

In the end, of course, Arabella neither becomes a Member of Parliament nor embarks upon a career. Instead, she merely enters into a companionate marriage, an ending which, as we have seen, draws criticism from modern feminist critics. But as Joan Kelly points out, even those like Astell whom we now classify as "feminists" would not have called themselves that. "If they had applied any name to themselves, it would have been something like defenders or advocates of women."⁵¹³ In the eighteenth century, the debate centered on the intellectual status of women: were they mentally inferior to men? To be a feminist in eighteenth-century England meant answering this question in the negative. Moreover, to be a feminist meant having "a sure sense that the sexes are culturally, and not just biologically, formed."⁵¹⁴ Thus, in answer to the question, "Why are there so few women who have demonstrated their intellectual equality?" eighteenth-century feminists answered, "Because Custom, created and maintained by men, has denied women an equal education and equal opportunity to exercise their mental powers." In response to the final question posed to women's advocates in the eighteenth century, "In what roles do women want to exercise their intellectual powers?" moderates like Astell gave a conservative (by modern standards) answer: as wives and mothers. Only radicals like Sophia dared to suggest a public role for women.

In *The Female Quixote*, by drawing upon the vocabulary of Custom and Reason, by celebrating Arabella's intellectual powers, by showing that her "Follies" result from her inadequate education (which eighteenth-century feminists regularly equated with the reading of romances), and by suggesting, ever so ambiguously, that

513. Joan Kelly, *Early Feminist Theory and the Querelle des Femmes, 1400-1789*, 8 SIGNS: J. WOMEN CULTURE & SOC'Y 4, 5 n.3 (1982).

514. *Id.* at 7.

women might be qualified for public roles, Lennox makes the same claims for Arabella that the eighteenth-century feminists made for all women. Arabella's marriage to Glanville, their union in "every Virtue and laudable Affection of the *Mind*,"⁵¹⁵ represents one version of a feminist future for a mid-eighteenth-century woman.

B.

The two correlative propositions advocated by the eighteenth-century feminists — that women's minds are distinct from their bodies and that women's intellects are equal to men's — challenged on the most fundamental level the relegation of women to the jury of matrons. Had the feminists of the eighteenth century succeeded in championing these propositions, the conceptual foundation of the jury of matrons would have been exploded. Women's power of judging no longer would have been seen as inferior to men's and no longer would have been limited by the conceptual link between bodily difference and intellectual weakness.

As Erica Harth notes, however, the separation of mind from body led to a "discursive trap": "If an identical disembodied mind in men and women alike is made to be the principle of sexual equality, what can be made of embodied difference?"⁵¹⁶ Ultimately, as Londa Schiebinger demonstrates, this trap was avoided by reinstating a link between mind and body. The principle of "complementarity" accounted for the biological differences in the male and female bodies by positing distinctions *in kind* between their intellectual and emotional faculties, distinctions that corresponded to the differing activities assigned to the public and private spheres.⁵¹⁷ That is, women's mental abilities, while not inferior to men's under the complementarity theory, fitted them distinctively and solely for the domestic sphere. As earlier critics have ably shown, it was this theory of complementarity that justified women's continued exclusion from the jury. The eventual triumph of complementarity in the nineteenth century proved that the early eighteenth-century feminists had been right: Society's view of women's minds vis-à-vis their bodies was crucial for women's education and, in turn, for their social, political, and legal rights.

515. LENNOX, *supra* note 200, at 383 (emphasis added).

516. HARTH, *supra* note 334, at 9.

517. See SCHIEBINGER, *supra* note 16, at 214-44.

