Isaac v. Elizabeth Gouverneur: sex, sensibility, and the creation of New York's 1787 divorce law

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ISAAC V. ELIZABETH GOVERNEUR:
SEX, SENSIBILITY, AND THE CREATION OF NEW YORK’S 1787 DIVORCE LAW

by

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Abstract

*Isaac v. Elizabeth Gouverneur: Sex, Sensibility, and the Creation of New York’s 1787 Divorce Law* combines legal and cultural history to illuminate the beginning of judicial divorce in New York State, analyzing the creation of New York’s 1787 divorce law within a prism not previously used in studies relating to early New York divorce. Prior scholarship has either denied the existence of the 1787 law or concentrated on nineteenth-century rulings to conclude that alimony depended on a wife’s innocence. Chancery Court records from 1787 to 1813, however, show that guilty wives were granted alimony, illustrating a significant change in judicial policy. This dissertation follows a micro-history narrative that focuses on the case of Isaac and Elizabeth Gouverneur. In addition to being one of the most complete cases from this period, it was the proceeding that prompted the creation of New York’s 1787 law. Moreover, it offers an entry-point into the mindset of an eighteenth-century middling-class woman. Elizabeth’s culture sheds light on the creation of the law, as she, New York policymakers, and jurists were influenced by the culture of sensibility, which encouraged sympathy for those in distress and prompted critics to warn that novel reading could create unfaithful wives. Excessive sensibility became associated with the excesses of the French Revolution, and therefore a reaction against sensibility coincided with the reaction against the French Revolution. Sensibility would survive the reaction against it, but it would be cleansed of its association with female sexuality. As the fear of female sexuality altered the culture of sensibility, it contributed to the shift in New York’s divorce policy, which occurred during the 1810s, by punishing guilty wives more than guilty husbands.
Acknowledgements

I discovered that the New York State Archives housed eighteenth-century divorce records years ago, yet it has taken many years to complete the dissertation originally inspired by those sources. Teaching opportunities and a near-fatal car crash hindered a more timely completion, yet they have provided me with years of fond memories and indebted gratitude. First, and foremost, this dissertation would not have been possible without the guidance and support of Professor G.J. Barker-Benfield. His brilliance, questions, and suggestions always challenged me. Notwithstanding his demanding expectations, he could sense when I needed reassurance about my topic and my abilities. Professor Barker-Benfield’s relentless support was exemplified by his visitations while I recovered from the accident. I remember awaking to him next to me, ready to discuss eighteenth-century sensibility. He never doubted, or at least never let on that he doubted, my quick recovery and resumption of academic duties. This should provide a glimpse of the man I was lucky enough to have as an advisor throughout most of my dissertation process until his departure for his year-long stay at Cambridge University. Still, words cannot express my gratitude to him.

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I would like to thank Professor Ann Withington for improving my writing skills, and Professor Sung Bok Kim, who served as chair for my comprehensive exam committee. I am indebted to Professors Lawrence Wittner, Jim Harrison, and Karl Barbir for their advice and assistance regarding the art of teaching. Professors Bruce Eelman, Karen Ward Mahar, Wendy Pojmann, and Jennifer Dorsey were kind enough to share their experiences, offer advice, and provide encouragement during my four years teaching at Siena College. I would like to thank Irene M. Andrea, assistant to the chair, Dr. Richard Hamm, the department chair, and Marlene Bauman for their continued assistance, especially during the last year. Scott Rummler’s assistance with a number of paperwork matters made the bureaucracy of a university center more manageable. I am grateful to Beacon College for allowing me time off to defend this dissertation.

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thesis on divorce) read my dissertation in its entirety. My cousin Lynn Pouliot, who lives in the D.C. area, always welcomed me as I travelled along the east coast; I am grateful for the nights we bonded over our discussions of life as Ph.D. students.

I am thankful that my significantly younger sister, Kaitlyn Yook, will finally know her sister as something other than a college student. Kait’s intelligence, honesty, sense of humor, and sense of style has kept me grounded as it forced me to reflect on the type of person I would like to be. This dissertation, along with my other endeavors, would never have been possible without the love and support of my mother, Elizabeth Yook. She has been a consistent source of optimism throughout my academic journey, and was kind enough to humor my endeavor by critiquing sections of my work in progress. It is impossible to thank her for all she has done for me and for her contributions to this dissertation.
Isaac and Elizabeth Gouverneur were married on the Dutch West Indian island of St. Eustatius in 1778. At the time of their marriage, the American Revolution had already been in progress for four years, and Isaac had been aiding the Americans by conducting trade with them despite the protestations of the British. In December 1780 Britain declared war on the Netherlands, and its colonies; a month later the British invaded St. Eustatius, destroying property and ending the island’s position as a prosperous trading port. During the invasion, the British arrested Isaac for his part in the trade with the Americans. He was imprisoned until the end of the war in 1783. After his release, Isaac and Elizabeth were living in New York City. The couple’s friends suggested that Elizabeth reside apart from Isaac because they believed her behavior was making him ill. Isaac apparently agreed, and Elizabeth moved to Philadelphia in May 1785, after a brief stay in New Jersey. She lived at the house of her step-uncle, Robert Stevenson. Her mother and step-father, who were visiting from the West Indies, also lived there for most of the next year. Besides Elizabeth’s family, there was also a seventeen year old apprentice, James Cadell, and a young “Negro girl” residing in the house. While in Philadelphia, Elizabeth Gouverneur committed adultery with Cadell.\(^1\)

Her affair was discovered because Elizabeth became pregnant and had a son on or around October 2, 1786. By all accounts, Isaac was living in New York and had no contact with Elizabeth in December 1785 and January 1786, and therefore physically could not have been the father. At some point, after Elizabeth’s return to New York in

\(^1\) Isaac Gouverneur v. Elizabeth Gouverneur, 1787-89. New York State. Court of Chancery, Miscellaneous files, 1772-1847, J0087-82 Box 64 G-96, New York State Archives.
May 1786 and before the birth of her son in October, Isaac noticed her pregnancy. He petitioned the New York State legislature for a divorce, which was presented to the Assembly on January 22, 1787. Although the legislature had passed private bills of divorce after the end of the Revolution, it opted to alter the process of divorce. Isaac’s petition prompted a legislative committee, led by Alexander Hamilton, to create a judicial divorce bill. Hamilton argued that divorce was a means to help “real objects of distress.” His argument must have been persuasive because the bill passed, even though there had been a debate over a clause that denied the guilty party the right to remarry. The divorce bill allowed for divorces in cases of adultery and denied the guilty party the right to remarry. It was passed on March 30, 1787, about six months before the Constitutional Convention presented its plan for the federal government.\(^2\)

The divorce trial began in 1787, and the Court of Chancery, an equity court, was granted jurisdiction over divorce cases. On December 11, 1787, Elizabeth had still not answered the bill of divorce, and the Court interpreted this as her being guilty, yet it still required evidence. It was during this period that the Court obtained the letters written by Elizabeth to Isaac and her mother to prove that Isaac and Elizabeth were married and that she was guilty of adultery. The letters were probably written during the summer of 1786 when her “sin” became obvious. She first attempted to deny that she had committed adultery, but she relented and confessed in a letter to her mother that she did have an affair with Cadell. Still, in a letter to Isaac, she was not ready to take the blame for the affair; she described Cadell as a villain who designed her ruin. Cadell had corrupted her

mind by bringing her novels that he chose, as she insisted, to seduce her. She urged Isaac
never to let their daughter read novels. Her official claim was that she had not consented
to the affair, but her step-father did not believe her, as her letter to her mother and
Stevenson’s testimony in court show. He thought that if anything, Elizabeth had seduced
Cadell, a quiet, deferential boy. New York’s Court of Chancery’s ruling does not seem to
have been influenced by either Elizabeth’s or Stevenson’s versions since it stated that the
affair had been the result of mutual passion and the young age of those involved.
Elizabeth was probably around twenty-five or twenty-six, and Cadell was about
seventeen or eighteen at the time of the affair.³

In December 1788 the Court decided that the marriage between Isaac and
Elizabeth was dissolved and they would “be freed from the obligation of the same: as
long as it doesn’t affect the Legitimacy of the children…” It ordered James M. Hughes,
the master of the court, to record how many children were born of the marriage, and
Isaac’s financial situation. His report shows that Isaac was required to pay 500 pounds
maintenance for the daughter he had with Elizabeth, who was about 10 years old in 1789,
and the son that she had with Cadell, who was born while Isaac and Elizabeth were
married.⁴ The court records do not state explicitly if Elizabeth received alimony but the
court did award alimony to guilty wives during the first couple of decades of judicial
divorce in New York.

Evidence for the Gouverneur case and other early New York divorce cases can be
found in New York’s Chancery Court records housed in the New York State Archives,
located in Albany, New York. When I first went to the Archives, I met with Dr. Jim

³ *Gouverneur*, Miscellaneous files, J0087-82 Box 64 G-96.
⁴ *Gouverneur*, Miscellaneous files, J0087-82 Box 64 G-96.
Folts, who suggested that I look at nineteenth-century records, as these were more readily available, complete, and in good condition. In contrast, the eighteenth-century records were damaged and incomplete since a number of the documents had been burned, and some had been completely destroyed in a 1911 fire. Still, my interest in the revolutionary era and the origins of divorce in New York State gave me the optimism that I might find something out of the remnants. I persisted and was presented with a long, skinny, hard-covered folio that contained an index of cases. The cases were arranged by complainant’s last name, and provided no indication if a proceeding related to a divorce, property dispute, contested will, or guardian suit. By scanning the index for female names I devised a list of possible divorce cases. I found the fragments of forty divorce cases tried before 1800 and recorded on parchment paper. One of the most complete cases was the case of Isaac v. Elizabeth Gouverneur, which had prompted the legislature to create the divorce law. Their case, along with the pieces of the others, sheds light on early New York divorce. To gain more insight into why the law was created, I would need more information; therefore, I planned to analyze the petitions to the legislature, especially Isaac Gouverneur’s petition that led to the creation of the law.

When I requested to see the petitions the archivist explained that she would have to send the documents to the lab in order to see if they could be handled. More than a month later I heard the verdict; the records were too damaged to be used. In the meantime I had searched the personal papers of New York legislators, particularly those of Alexander Hamilton, for evidence of discussion or debate on divorce, but I did not find enough to answer my questions. There was no debate over legalizing divorce published in the papers of the period. I realized, as Dr. Folts had warned, that I would not have enough
material to uncover the creation of New York’s divorce law. My hopes of approaching early New York divorce from a political and legal standpoint were shattered, or so I thought.

The evidence I found, particularly the Gouverneur case seemed too valuable to discard completely. So I reconfigured my project into a micro-history that would focus on the Gouverneur divorce and attempt to understand Elizabeth’s situation and mindset. The remaining divorce records were sufficient to show how New York’s Chancery Court ruled in such cases. Moreover, the inclusion of Elizabeth’s letters in the case provided insight into her perception of her relationships; when her perception is placed within the cultural context of her time, it illuminates the intersection of cultural and legal history. I am influenced by the history of mentalités, notably Robert Darnton’s essay on “The Great Cat Massacre,” and his *Forbidden Best-Sellers of Pre-Revolutionary France*. In “The Great Cat Massacre,” he focuses on a single story of apprentices massacring cats. Darnton had found an account of the massacre written by Nicholas Contat, who described his life as an apprentice in Saint-Séverin, Paris, during the late 1730s. People in the late twentieth century would not find the cat massacre funny, yet the apprentices had. Darnton contends that this seemingly “opaque area,” where a custom no longer makes sense, is the best entry point to “unravel” a “foreign system of meaning.” In *Forbidden Best-Sellers of Pre-Revolutionary France*, he claims that “books aroused emotions and stirred thoughts…” Darnton believes that the *Anectodes sur Mme la comtesse du Barry* (1775), a popular *libelle*, which presented the French monarchy as the “vilest variety of ministerial despotism,” contributed to the French Revolution of 1789. He claims that the French
people’s “…view of politics, however askew, was as crucial an ingredient of political reality…”

In similar fashion, Natalie Zemon Davis based her *The Return of Martin Guerre* on a close reading of “a legal text and a literary tale” to find “the hidden world of peasant sentiment and aspiration.” She believes that an “unusual case…can sometimes uncover motivations and values that are lost in the welter of the everyday.” David I. Kertzer’s *Amalia’s Tale* is an “unknown story…” that he wants to tell “not because of its ability to shock, but because it offers a rare glimpse into a world that is no more.” Davis and Kertzer used the best evidence available, which is often sparse, to gain insight into past peasant societies. I believe that using a similar method can shed light on the mental world of a middling-class eighteenth-century American woman. The quest to gain insight into mentalities, an approach to history from the bottom up, can add to an understanding of past peasant societies and the French common people in *Ancien Régime* France and on the eve of Revolution, but it can also shed light on gender relations in late eighteenth-century America. Since Elizabeth blamed her affair on novel-reading, a claim that seems unbelievable to early twenty-first century Americans, I sought to understand it, and perhaps gain insight into her understanding of her marriage, her society, and her affair with Cadell.

In trying to understand Elizabeth, and her mindset, I found the explanation for the creation of New York’s divorce law. Both were influenced by a “culture of sensibility,” a

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phenomenon named and described by G.J. Barker-Benfield in his 1992 book, and
generally accepted by historians and literature critics since then. Sensibility denoted the
ability for people to be able to feel through the senses. The term was developed during
the late seventeenth and early eighteenth centuries. Jay Fliegelman argues that Thomas
Paine’s *Common Sense* (1775) “made clear that ‘sensibility,’ understood earlier in
Lockean terms as a rational faculty, was in truth, as the great Scottish Britannica
described it, a quality of the heart.” More recently, Sarah Knott clarifies the elusive
relationship between sensibility, the head, and the heart; it was “based, not in strict
oppositions of head and heart, reason and passion, but rather in a naturally sensitive,
briskly responsive, and thoroughly holistic self.” An earlier scholar, Albert Hirschman, in
his discussion of the history of the passions, points out that St. Augustine had considered
civic virtue to be the love of praise (a vice) as the “ruling passion;” it would suppress the
other passions. Such a view of the need to counter the passions was revived in the
eighteenth century, as Hirschman contends, but contrary to Augustine and the stoics who
heeded him, they were given new direction through the belief that passions could be
“invigorating rather than pernicious.” Nicole Eustace, in her 2008 study of feelings in
Philadelphia from the Seven Years’ War through the American Revolution, claims that
the line “Reason is the card, but passion is the gale” from Alexander Pope’s *Essay on
Man* had, by the 1770s, “sunk so fully into public consciousness that it began to appear in
private papers without attribution;” it suggested to Philadelphians that the passions could
be invigorating and benefit society as a whole, but they needed to be guided by reason.
Knott’s description of sensibility shares commonality with Eustace’s examination of
Pope’s influence on America and Hirschman’s explanation of the elevation of interest.7

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7 G.J. Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago:
Their arguments, taken together, suggest that by the late eighteenth century, ideas were already in place that provided a more complicated understanding of human behavior than the contrast of passion and reason. They included the idea that a combination of reason and passion was essential for human progress.

The idea that the passions, or feelings, could have an invigorating effect would inform sensibility. According to Knott, “Malleable, perceptual, made in and of the social world, and open to refinement were the hallmarks of ‘sensible’ selfhood on which American revolutionaries would so actively draw.” During the revolutionary era, sensibility referred to “a highly developed capacity” for the “emotional pain and pleasures in oneself or in others.” Particular words, including “wounds, pangs, stings…” and “sympathy, compassion, pity, tenderness, and benevolence,” were part of the language of sensibility that was intended to convey happiness, pain, and bittersweet moments. If a person was in tune with the feelings he or she gained through sense perception, then he or she would act morally.

The idea of an innate “moral sense” was central to sensibility. The third earl of Shaftesbury (1671-1713), educated by John Locke, encouraged the idea of innate moral sense, following Locke’s theories on sensational psychology, in his early eighteenth-century writings. Francis Hutchenson (1694-1747) “carried the flame of Shaftesbury’s innate goodness idea to [Adam] Smith and the whole school of Scottish ‘moral sense.’”

Knott, Sensibility and the American Revolution, 5-6.
Refined sensibility produced moral behavior, but the term was not always associated with moral behavior. The definition of sensibility could include “the moral refinement” that resulted from “deliberate pursuit and cultivations.” Or it could simply denote the “quality of sensitivity” that was informed by nerve impressions, and was “a universal basis of human nature…” To study nature was to study a mechanism designed by God.

Seventeenth-century thinkers, especially Descartes, based their view of nature on this idea, which continued through the eighteenth century, “and it underpinned the conception of sensibility.” In the mechanical world, a sensible person would act based on selfless benevolence. He or she would sense how other people felt and would in turn be affected by this. For example, he or she would feel pain because they witnessed a person in distress. Knott explains that sensibility was the combination of “body and mind” to perceive and sympathize, which connected a sensible person to the larger society.

Sensible people were connected through affection, and it was this idea, as Fliegelman points out, that formed the basis of Paine’s *Common Sense*. Affection, not duty or force, should join people together in a society.9

Virtue in distress was a popular plotline in eighteenth-century sentimental novels. It implied female virtue, or chastity, that was repeatedly threatened by a male seducer who would resort to deceptive schemes to accomplish a woman’s “ruin.” The narrative was used by Americans in their struggle for independence. Knott explains that sensibility, and the virtue in distress plot, required a “cold, hostile, indifferent world.” The seducer or tyrant was unfeeling, as opposed to the sensible person. She argues that “the world of cool reason, atomistic independence, and rugged autonomy so dominant in American

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history was in part the world as imagined by sentimentalists.” By the time of the American Revolution the theme of virtue in distress, helped along by the popularity of *Clarissa*, was already well-known in America. During the imperial crisis, Americans had attempted to appeal to English sensibility by casting America as virtue in distress. But, as Barker-Benfield argues, “Americans were disillusioned, their attempt to elicit British compassion futile.” He explains that the Declaration of Independence “expressed the themes of disillusionment; like the tyrant king, ‘our brethren…have been deaf to the voice of justice and consanguinity.’”

*Clarissa* (1747-48) was Samuel Richardson’s second epistolary novel, and its title character was considered beautiful and virtuous. She had an admirer, Lovelace, who was supposed to have courted Clarissa’s older sister, but fixed his attentions on Clarissa. This, and an old feud between Lovelace and Clarissa’s brother, led the family to despise Lovelace. Her father forbade her from corresponding with Lovelace, but she continued because he had never offended her, and she worried that the conflict between her brother and Lovelace could put her brother in danger. It should be noted that she also felt an attraction to him. To add to Clarissa’s distress, her family wanted her to marry a man without sensibility. Lovelace, fulfilling his role as the villain of the virtue-in-distress novel, devised a scheme to take Clarissa from her house. He succeeded and set up lodgings for her in a brothel. She would not sacrifice her virtue, meaning she would not have sex with him, so he ended up colluding with the madam of the brothel to drug Clarissa and rape her. After this, she had been ruined; her natural sense of virtue meant that she physically became more ill as time went by, and this would lead to her death.

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Only her death could redeem her virtue and provide her with relief. The theme of virtue in distress took on new life as the dispute between Britain and its American colonies developed. American virtue, characterized by simplicity, frugality, and sincerity with the intention of doing what was best for society as a whole, was in danger from British corruption based on “luxury, vice, and deceit.”¹¹

Jan Lewis argues that many literate Americans of this period came to believe that marriage provided the training ground for a republic, which was to be held together by mutual affection and “not by patriarchy’s duty or liberalism’s self-interest…” Republican virtue was essential to a people not bound by force. Barker-Benfield has shown that the cultures of republicanism and sensibility overlapped. The language of sensibility provided a means to discuss how people should behave in a republic, which was similar to how they were to act within a marriage of sensibility. Affectionate feelings were central to both. A republican wife’s virtue and education showed that “she deserves a larger role in the home and in society.” The counterpoint of the republican wife was the republican husband. Lewis contends that the use of “the loving partnership of man and wife” to explain America’s role in its conflict with Britain, gave women a “new political role…as a wife…” The husband and wife would enjoy a companionate marriage in which her education made her either deferential and virtuous, or virtuous and intelligent in order to converse with her husband; the husband was to be a man who provided and cared about the well-being of his family, and society as a whole.¹²


Rosemarie Zagarri has added to the understanding of the republican wife and mother by examining the intellectual antecedents, and demonstrating that it was “part of a broad, long-term, trans-Atlantic reformation of the role and status of women.” Most coherent and influential were the ideas of the civil jurisprudence school of the Scottish Enlightenment, specifically the ideas of David Hume, Adam Smith, Lord Kames, William Robertson, and John Millar. They promoted theories where “women played a prominent role,” and therefore provided the intellectual foundation for the idea of the “republican mother.” The civil jurisprudence school saw commerce as having a civilizing instead of a corrupting effect, and that held women were essential to the civilizing process. Emergent here, as Carole Shammas and Barker-Benfield have argued, was the recognition of middle-class women’s role as consumers. Moreover, the four-stage theory of human civilization, first articulated by Montesquieu and followed by many Scottish and French philosophers, gave women a larger role by claiming that in the fourth stage, a mercantile society, women and men were the most equal. In the fourth stage, women needed to be educated for their “new role as men’s friends and companions.”

It was thought that women naturally had a finer sensibility; they were to feel, and men were to reason, and together they complemented each other perfectly. Not all agreed with this assessment, including Mary Wollstonecraft, who denounced women’s association with sensibility because they “were reduced to an entirely physiological system…” Moreover, she contended that education, not nature, had made women “weak, ‘artificial beings,’ reared ‘in a premature, unnatural manner…’” The idea of women’s

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greater sensibility was a way to contain the revolutionary possibilities of individual improvement for women that the seventeenth-century Puritan Revolution, the challenge to patriarchy, and Locke’s blank slate had unleashed. Identifying their Revolution with historical progress, Americans took the idea of women’s greater sensibility a step further by explicitly connecting the idea that women influenced manners with the idea that manners influence society, which in turn influenced government to conclude that women influenced government. The greater gender equality mentioned before was not in the “modern sense,” but it did hold the potential for a more egalitarian society; women were responsible for society and therefore did not need legal or political rights, which were reserved for men who were responsible for government. As Gordon Wood points out in *Radicalism of the American Revolution*, republicans who brought about the Revolution unintentionally unleashed democratic individualism for males.15

Lewis found that marital discord showed that the relationship was not really egalitarian, or, as Zagarri suggests was not egalitarian in the “modern sense.” Woman’s role was altered, but she was “as constricted as ever.” Zagarri, Kerber, and Lewis agree that the new conceptualization of women in early America changed the rhetoric, but did not really change women’s reality; “It congratulated Americans for having moved farther along the road of progress than any other nation, but did not really require a basic alteration in the relationships between the sexes.” Republicans stressed harmony above all else and not necessarily individual happiness. Or, it could be said the pursuit of happiness to which Jefferson referred was men’s happiness. As long as a couple could function in a harmonious way toward the outside world, then it was good. If not, it

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threatened society. People who remained single endangered the society because they lacked a means for love and became more selfish.\(^{16}\)

Republicans altered the image of Eve from the woman responsible for the fall and made her accountable for the redemption of society, which she could achieve by using her seductive qualities to good ends. Lewis notes that republican women were not seen as “passionless,” as they were to use their sexuality to “tempt men to be good.” This meant that women were “to make young men…republicans.” Barker-Benfield points out that the reformation of men was “a central objective of the culture of sensibility, the climax of sentimental novels.” Lewis explains that when republicans attempted to create “an earthly paradise,” they “could never fully forget the Fall…” since “they knew that, when tempted by a deceiver of Satanic proportions, humankind would fall and fall again.” The reality that some people were not virtuous and could not be made virtuous found an outlet in eighteenth-century fiction’s focus on the poor virtuous woman deceived by a worldly rake, a narrative similar to Eve’s fall. “Seduction tales essentially reenact the Fall, with the victim cast as Eve and the seducer as Satan.”\(^{17}\) In this version, a woman’s naturally passionate nature, without sufficient reason, would mean that she could be led into


temptation by a deceptive seducer. Yet republicans’ reading of Adam and Eve’s fall held that women could reform men, and therefore society, to be virtuous, but they feared their greater sensibility would lead them to fall victim to temptation.

Notwithstanding the ideal that individuals, even women, choose their spouses based on affection and not interest, economics continued to play a dominant role in people’s view of proper marriage. A man’s finances had to be in order before he was to consider marriage, and a vast difference in the financial circumstances of a man and woman could impede their union, or, at least, prompt society’s ridicule of them.

Benjamin Rush included “Great inequality of rank” in his list of reasons that hindered socially acceptable marriages to explain why the “marriage between a Mrs. Smith, a wealthy widow with two children, of a respectable family, to her overseer led to her being universally censured for it.”18 Society looked down on unequal marriages, especially where the husband’s finances were inferior to the wife’s. The continued emphasis on finances suggests that the republican ideal of choosing a mate based on affection was not absolute.

Marital dissolution could disrupt society, and the response of New York legislators and jurists to reestablish order was legal divorce. New York’s 1787 divorce law broke from the English practice, which limited divorce to a small number of elite men who successfully completed a multi-step process. Most states created their own divorce laws in the period after they gained independence from Britain. New York’s law was the most restrictive out of the northern states, and only South Carolina, which outlawed divorce completely, was more prohibitive. Massachusetts and Connecticut,

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because of their Puritan backgrounds, had a tradition of legal divorce. In fact, Massachusetts was the one state where the divorce law became more restrictive as a result of the American Revolution, yet it was still much more lax than New York’s. The variations in American divorce law led to more apparent problems in the next century, particularly when eastern states started to fear the liberal divorce laws of the West.

The creation of New York’s 1787 divorce law requires more scholarly attention than it has received. Linda Kerber’s groundbreaking 1980 Women of the Republic states that New York did not have legal judicial divorce in 1789, and that divorces could only be granted by legislative decree. Sarah Knott, in her insightful Sensibility and the American Revolution (2010), cites Kerber to support the same claim about New York divorce. The records of divorce cases, tried in New York’s Chancery Court, beginning in 1787, prove that legal judicial divorce existed. Moreover, the Papers of Alexander Hamilton and Aaron Burr also illuminate judicial divorce in New York from 1787 to the nineteenth century. Some scholars have noted the creation of New York’s 1787 divorce law, but their conclusions demonstrate a greater focus on cases tried after 1814. Studies on New York divorce have concluded that early New York divorce punished guilty wives by not awarding alimony. Hartog and Basch, approaching the subject from different angles, found that New York divorce was intended to regulate behavior by punishing the

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guilty spouse. Mary Beth Debicki found that the “situation was significantly harsher for a wife who committed adultery” because she lost her right to property, alimony, and their children.

This dissertation shows that while guilty wives were financially punished throughout most of the nineteenth century, they were not during the Early Republic. The Chancery Court records up until the 1810s illustrate that even guilty wives obtained alimony. Hartog and Basch both view divorce as a “remedy.” Hartog argues that divorce was “a public remedy for a public need.” The need was a “well ordered society.” He maintains that similar to “the criminal law, divorce law subjected the guilty party to punishments (like loss of dower and support in the case of ex-wives, and loss of husbandly control, custody, and property in the case of ex-husbands.)” According to Hartog, the law was designed to deter divorce by punishing the guilty party. Basch argues that divorce by the end of the nineteenth century was a “woman’s remedy” since 116 out of 189 cases she sampled were brought forth by women. Although her findings may fit the nineteenth century as a whole, the court cases of the late eighteenth century do not. The cases until 1800 are evenly divided between men and women complainants. One explanation for this could be that since divorces granted to women were even more of a novelty than they were for men, fewer women who experienced marital problems felt comfortable enough to come forward with a suit or were aware that they could successfully bring suit. Basch states that requests for alimony in Indiana and New York

21 Hartog, Man and Wife, 71.
22 Hartog, Man and Wife, 63-64, 71-73.
23 Basch, Framing American Divorce,102.
24 I reviewed all the cases I could locate for the period before 1800. For the period after 1800, I used a random sample, so I am hesitant to make claims regarding gender ratios. New York State. Court of Chancery, Chancery Minutes, 1781-1829, Series j0059, New York State Archives.
were uncommon because the women who sued for divorce had the most to lose; they were usually business women who would gain from divorce. Basch also explains that alimony was dependent on a wife’s behavior and on the assessments of her needs. Moreover, if a husband lacked means, then no alimony was required. Basch claims that “alimony, however, never enjoyed the same fundamental legitimacy as either dower or the wife’s separate estate, or even the separate maintenance provisions in legal separations. It was subject always to considerations of the wife’s behavior and to judicial assessments of her needs.” My work builds on Hartog’s and Basch’s arguments that the divorce law acted as a solution to problems that already existed, but it fills in the early years of judicial divorce in New York and shows that divorce acted as a “remedy” for the problems of martial dissolution and women’s economic inferiority regardless of guilt or innocence. The findings of Basch and Hartog suggest that the initial post-revolutionary Chancery Court rulings that required husbands to support ex-wives were exceptional. This dissertation aims to explain this change by exploring the relationship between the culture of sensibility, the Early Republic, and divorce.

Chapter 1 focuses on St. Eustatius during the time of the American Revolution, when Isaac and Elizabeth were married on the island. It explores the geographic, economic, and political landscape, which provides an explanation of the early years of their marriage, and their subsequent move to New York. It also lays out the trans-Atlantic nature of the culture of sensibility, which influenced Elizabeth Gouverneur and

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Alexander Hamilton, who had both lived in the West Indies before they moved to the mainland. The next chapter will discuss criticism of novel-reading during the late eighteenth century and will refer to actual relationships blurring the line between fiction and reality. This will illuminate how Elizabeth described her life to those closest to her. By demonstrating that Elizabeth’s story follows the popular plotline of virtue in distress, chapter 2 will demonstrate how fiction could offer a framework for self-analysis; it will also provide a foundation for the next chapter. Chapter 3 will focus on Alexander Hamilton in order to explain the creation of New York’s divorce law. It analyzes Hamilton’s use of the language of sensibility, his public portrayal of his adulterous affair, and his views on French Revolutionary divorce policy. In addition, Hamilton will be placed within the context of other, contemporary views on divorce. Hamilton’s use of the language of sensibility suggests that he, in accordance with views that were popular in his society, believed in showing sympathy to those who were miserable in marriage. His moderation with regard to divorce policy, nonetheless, also indicates that he was also influenced by republicanism, specifically its value of social harmony. Chapter 4 will further argue that republicanism and sensibility influenced early New York divorce, while showing that such views dominated New York divorce policy until James Kent became chancellor of New York in 1814.

My analysis of Elizabeth Gouverneur and Alexander Hamilton, along with the justifications used to support legal divorce in the eighteenth century and the use of sentimental language, sheds light on the change that occurred in New York divorce during the early Republican period. The culture of sensibility emphasized sympathy for those in distress. Individuals in distress were to be pitied, and it is this perspective that
informs the creation of New York’s 1787 divorce law. The culture of sensibility shaped Elizabeth’s view of her situation, but it also influenced New York legislators and judges in a way that would not survive the period of the Early Republic. By the mid-1810s, the trans-Atlantic reaction against the excesses of the French Revolution and the beginnings of the market revolution in America created a backlash that affected New York divorce. The rulings in New York’s Chancery Court, along with the writings of Chancellor James Kent, show a move away from a culture that sought social harmony and was sympathetic to human weakness to one that was concerned with maintaining moral order through stricter methods. Although the records, especially for the first couple of decades of divorce in New York State, are incomplete, the surviving documents can be pieced together, along with newspapers, letters, personal papers, memoirs, and literature, to illuminate the creation of New York’s divorce bill, the cultural expectations for marriage and justifications for divorce, and the implications of the combination of cultural and legal practices for New York’s divorcees during the early Republic.

Hamilton and Elizabeth Gouverneur both employed the language of sensibility and the plot of virtue in distress. A decade after independence and one year before the creation of the Constitution, Elizabeth represented her marriage in the language of sensibility by pointing to the “tenderness” of her husband, and claiming that a “villain” had caused her “ruin.” Her villain accomplished “his purposes” by bringing her novels, which was consistent with criticism against the novel during her time. The following year Hamilton employed the language of virtue in distress to persuade New York legislators to vote in favor of the 1787 divorce bill. It should be noted that Hamilton had not seen Elizabeth’s letter to Isaac that had employed the virtue in distress theme, and that
Hamilton was referring to Isaac, not Elizabeth, when he claimed that that the law would help “real objects of distress.”  

Chapter 1

The Gouverneurs in St. Eustatius:
Merchants, Sailors, Slaves, Creatures, and the Culture of Sensibility

The Dutch, whose ingenuity was a necessity given their water-logged land and lack of natural resources, defeated their Spanish overlords in 1648, after eighty years of warfare, to become an independent state. Even during the Eighty-Years War, the Dutch had begun their rise as a dominant trading power and had started to gain colonies. The Dutch West India Company (WIC), incorporated in 1621, led the colonial adventures in the Americas and West Africa. In 1634 it captured St. Eustatius, a Leeward island that is centrally located in the Caribbean. In 1756 St. Eustatius became a free port, which meant that it did away with custom duties, in order to increase its competitive edge.¹ Also in 1756, the French and Indian War began, and St. Eustatius profited handsomely by conducting contraband trade. The eighteenth century was St. Eustatius’ Golden Age, particularly the years between 1756 and 1781. Its prosperous reign ended during the American Revolution because it had continued to trade with the Americans, and once Britain declared war against the Dutch, it took vengeance on the Dutch colony of St. Eustatius. Isaac Gouverneur Junior, a prominent St. Eustatius merchant, traded with the Americans during the American Revolution. In 1778, while conducting this risky business, he married Elizabeth Peachman. Within three years, he was captured by the

British in their 1781 invasion of St. Eustatius. After the war ended, the couple moved to New York City.

St. Eustatius is a small island, about five miles long and two and a half miles at its widest. It “was different from all others. It seemed to have been shot up from the ocean by some convulsion, the chimney of a volcano, rocky and barren…,” according to Edmund Burke. Janet Schaw’s journal, which recounts her journey to the West Indies in the mid-1770s, described it as unsightly. She wrote, “…but the Island itself the only ugly one I have seen.” Disappointed, Schaw declared that nothing could keep her there, yet she noted the appearance of “Dutch industry little inferior to their dykes…” because “barracadoes” held back the sea. Oranjestad, St. Eustatius’s port town, had a single narrow street, about a mile long. The back half of town was carved out of a rocky mountain, and on top of it were “some decent-looking houses…” During his West Indian travels in 1825, Henry Nelson Coleridge caught sight of the islands of “St. Eustatius* and Saba, both of them Dutch islands,” as “[t]hey rise out of the sea in majestic cones, but, like Nevis, fall away on their north sides into a broken level.” He depicted Oranjestad as being “divided into an upper and lower range of houses.”²

Most of the island’s inhabitants lived in Oranjestad because the island is characterized by a small plain that “separates two inhospitable ranges of volcanic hills,

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happily extinct, and clothed in dense rain forest.” Schaw had been bothered by many Oranjestad inhabitants smoking tobacco, which was imported from Virginia, because “…the whiffs are constantly blown in your face.” The town was a center of international trade. During the American Revolution, American trade with the island was essential, and, according to Curtis P. Nettles, “tobacco alone would bring cash” at St. Eustatius. Historian J. Franklin Jameson first showed the forgotten importance of St. Eustatius to the birth of America. He urged his readers to consider that “Its tale is worth telling...partly on account of the...important part it played in enabling our forefathers to sustain that difficult and unequal struggle.” Americans were able to conduct trade with the island because it was a Dutch free port and it depended on its usefulness as an entrepôt to survive. Burke noted that “its proprietors had...made it an emporium for all the world...its utility was its defense.”

Thomas Jefferson attributed St. Eustatius’ prosperity to Dutch economic policy, which was based on free trade relative to the largely mercantilist world. On June 12, 1786, Jefferson sent a letter to Stael de Holstein, the Swedish ambassador to France, to suggest how Sweden could improve commerce with the United States by describing the previous success of St. Eustatius. He wrote that the island is by nature a rock, barren and unproductive in itself. But its owners became sensible that what Nature had denied it, Policy could more than supply. It was conveniently situated for carrying on Contraband trade with both the continents, and with the islands of America. They made it therefore an entrepôt for all nations.

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St. Eustatius, like the West Indies in general, could not support its population without the importation of food. But, unlike the sugar plantation islands in the West Indies, St. Eustatius lacked a cash crop of any kind. So, out of necessity, and as a result of its position as a free port in a mercantilist world, it acted as a center for trade. Moreover, while European powers fought wars, Dutch neutrality allowed the merchants of belligerent countries to store and sell their goods on the “rocky meager spot less than seven square miles in area…”⁹

American and West Indian trade was essential to both America and the West Indies. American, British, and West Indian traders and politicians were well acquainted with the trade and its importance. In November 1771 Alexander Hamilton, who was then a clerk for Nicholas Cruger in St. Croix, sent a letter to William Newton, which explained that Newton was to “proceed immediately to Curacao. You are to deliver your Cargo there to Teleman Cruger…” The same month and on behalf of Nicholas Cruger, he notified three men that “I have by this opportunity desired Mr. Thomas Ashburner of St. Eustatius to pay you the little matter I owe you, and when he has done it, I will be certifying the same.” Nicholas Cruger’s firm was involved in trade that spanned the West Indies and included Curaçao and St. Eustatius, where Isaac and Elizabeth’s family lived. It traded in codfish, cotton, tea, oats, cheese, sugar, and rum. Hamilton’s papers also show that the firm traded in mules from Maine. It received flour and bread from Philadelphia, flour from New York, and “Rye Meal…from Copenhagen.”¹⁰

⁹ Tuchman, The First Salute, 18-21.
It was a wonderland of goods. A customer could find “hand rich embroideries, painted silks, flowered Muslins, with all the Manufactures of the Indies...” If one moved further down the street, he or she would see “Sailor’s Jackets, trousers, shoes, hats etc....” In another “stall,” one could find the “most exquisite silver plate, the most beautiful indeed...and close by these iron-pots, kettles and shovels.” Schaw herself purchased “a quantity of excellent French gloves for fourteen pence a pair.” And she told her readers that they could also find “French and English Millinarywares.” St. Eustatius was a place “with contraband commodities of all kinds” that attracted people from all over, and Schaw assured that the merchandise was too numerous to describe it all in detail. She was also amazed at the diversity of peoples; “But never did I meet with such variety; here was a mercht vending his goods in Dutch, another in French, a third in Spanish, etc. etc....” She found the diversity “really amusing,” especially because the people dressed in “the habit of their country.”  

**Diversity and Slavery**

Schaw thought that the island acted as a haven for those who were treated cruelly in, or cast off from, their home country. She saw one man, originally from France, who had been broken on the wheel for a crime that he was later found innocent of committing. The man, having been broken, lived, but was deformed. He was banished from France because the “sight of him was a reproach...he came to St. Eustatia, where he is treated with much humanity and pity.” She also described a survivor of the Spanish Inquisition, who had also been falsely accused. He “was tortured till he has hardly the semblance of a human creatur remaining.” Dutch sailors had discovered him, took pity on him, and brought him to St. Eustatius. The Dutch, some of whom empathized with a man tortured

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by Catholic extremism, and the image of St. Eustatius’s position as a world marketplace should be balanced by an acknowledgment of the use of slaves in the Caribbean trade.\textsuperscript{12}

Olaudah Equiano’s first edition of his \textit{Interesting Narrative of the Life of Olaudah Equiano or Gustavus Vass, the African}, was published in 1789. Equiano shared his experience as a slave and claimed that his determination and intelligence had allowed him to earn enough money to purchase his freedom. We should note, too, that he was raised in a world that emphasized sensibility. To show that they were virtuous and civilized, people were to demonstrate empathy for the less fortunate. It was in this atmosphere that Equiano condemned and illuminated the inhumanity of slavery and the slave trade in the hopes of persuading others to believe that slavery was wrong and must end. He described his journey to freedom, which began at St. Eustatius. As Robert King’s slave, he acted as a clerk, and was usually on board one of King’s vessels that traded between the West Indies and North America. As he recalled,

\begin{quote}
I endeavoured to try my luck and commence merchant. I had but a very small capital to begin with; for one single half bit, which is equal to three pence in England, made up my whole stock. However I trusted to the Lord to be with me; and at one of our trips to St. Eustatia, a Dutch island, I bought a glass tumbler with my half bit, and when we came to Montserrat [a British colony in the Caribbean] I sold it for a bit, or sixpence.\textsuperscript{13}
\end{quote}

Equiano was able to make a profit because goods could be purchased cheaply at St. Eustatius and then sold at a higher price in other islands or in North America. Schaw had

\textsuperscript{12} Schaw, \textit{Journal of a Lady}, 136-137.
also noted that goods were cheaper in St. Eustatius than elsewhere, to the disadvantage of
the merchants who exported goods to that island.\textsuperscript{14}

In 1766 the ship Equiano was on “took slaves on board for St. Eustatia…” before
their journey allowed them to witness “the town [Charleston] illuminated; the guns were
fired, and bonfires [and] other demonstrations of joy shewn, on account of the repeal of
the stamp act.” Trade brought Equiano from the West Indies to British North American
ports at the time when Americans were resisting Britain’s attempts to gain more control
and revenue from its American colonies. On another visit to St. Eustatius, “[a]fter we had
discharged our cargo there we took in a live cargo, as we call a cargo of slaves.”\textsuperscript{15} He
recalled “cruelties of every kind…” including “violent depredations on the chastity of the
female slaves,” and the torture of “a negro man…because he had been connected with a
white woman who was a common prostitute…”\textsuperscript{16}

\textbf{St. Eustatius and the American Revolution}

According to Ronald Hurst, “Its [St. Eustatius’s] reputation for earnest dedication
to the business of making money is paralleled today [1996] by that of Hong Kong.”
Schaw’s and Coleridge’s descriptions of the physical layout of St. Eustatius suggest that
little had changed in the half century between their visits. Still, their journals illustrate
that one significant change had occurred. The first thing that struck Schaw was that it was
“a free port, which belongs to the Dutch; a place of vast traffick from every quarter of the
globe.” Aside from fulfilling her need to point out the unsightly physical attributes of the
island, she illuminated a bustling marketplace.\textsuperscript{17} By the time of Coleridge’s visit in 1825,
“few ships were within the bay…,” and he explained, “the colony is said never to have recovered from the effects of the capture by Lord Rodney in 1781.” Britain’s revenge compromised St. Eustatius’ trading position, which had long-term consequences.

The beginning of the end for St. Eustatius’s economic prosperity occurred on November 16, 1776. The commander of Fort Oranje, St. Eustatius, acknowledged a ship that was flying the American rebel flag on November 16, 1776. It was the first time the American flag was recognized by a foreign land. By doing so, the commander upset the British. Although the Dutch initially tried to use diplomacy to smooth over relations with the British, relations deteriorated. In July 1778 Governor Johannes de Graff traveled to the Netherlands to answer questions about the salute. He claimed it was customary to salute merchants and did not intend to recognize American independence. Still, St. Eustatius’ “crucial role…in sustaining the rebellion with shipments of arms and gunpowder for its troops and essentials for its upstart navy” sealed Britain’s hostility toward the island. Notwithstanding Dutch decrees to restrict trade, merchants evaded official policy.

The Dutch offended the British on matters besides the trade at St. Eustatius. John Paul Jones, a lieutenant in the Continental Navy, was sent to France in 1777 with news of the American victory at Saratoga. In France, he was given a warship, which he named the Bonhomme Richard, that was actually a refurbished French merchantman; then, following orders, he proceeded to “conduct a free-lance cruise for ‘distressing the Enemies of the United States.’” Jones succeeded in his mission. After battling and capturing the two-decker Serapis, a much larger and stronger ship than the Bonhomme

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Richard, Jones sailed for Amsterdam. His actions and post-battle stay in the Netherlands provoked the British. The British ambassador attempted to have Jones arrested or deported not only because of his actions at sea, but because of his status as a hero during his stay in Amsterdam. The popularity of songs and ballads, composed and sung in Jones’s honor, were particularly distressing for the ambassador.\textsuperscript{20}

While the salute at St. Eustatius and the Netherlands’ reluctance to help to the British diminish Jones’s freedom and popularity bothered the British, the final spark that brought Britain and the Netherlands, and therefore its colonies, to war occurred when the British intercepted a proposed treaty between the Dutch and the Americans, carried by Henry Laurens, the former president of the Continental Congress, on his way to assume a diplomatic post at The Hague in August 1780. John Lewis Gervais sent a letter to Henry Laurens in September 1782 (which, as we can see, employed the language of sensibility) to convey Gervais’s sentiment of “grief” over Laurens’s capture and his “affliction when I learnt the cruel manner in which you was treated in the Tower…” Although the authors of the provisional treaty lacked any authority to create such a document, Britain used it in an effort to pressure the Dutch into refusing to join the League of Armed Neutrality, proposed by Catherine the Great of Russia in February 1780. Sweden and Denmark had already joined the League, but the Dutch, who had been invited to join, had delayed making a firm decision. The British claimed that any pretension of Dutch neutrality was disproved by the provisional treaty. Then they “issued an ultimatum that the Dutch had failed to fulfill the terms of the Treaty of Alliance of 1678.” The treaty held that the Dutch were to aid the British if Britain was attacked by a third party. The Dutch claimed

\textsuperscript{20} Tuchman, \textit{First Salute}, 81-85.
that the treaty did not apply because the colonial revolt was an internal struggle within
the British Empire. America did not constitute an independent third party. After the
Dutch refused the ultimatum, they joined the League on November 20, 1780. The British
were notified of this on December 10, and they declared war against the Netherlands, and
therefore its colonies, ten days later.\textsuperscript{21} In February 1781 the British captured St. Eustatius.
The invasion, and subsequent occupation, destroyed St. Eustatius’ prosperous trading
position; the island never fully regained its previous glory.

\textbf{Cultural Connections in the Atlantic World}

Schaw’s discussion of the humanity of the Dutch in St. Eustatius, which saved
tortured individuals; Equiano’s description of the cruelties done to slaves to elicit
sympathy for slaves; and Gervais’s letter to Laurens that illuminated his “pity and
“affliction,” suggests how the culture of sensibility influenced the literate, Anglophone
Atlantic world. The growth of commerce had allowed for the refinement of manners.
Indeed, the refinement of manners was dependent on the consumer revolution, extending
to the proliferation of social occasions, as well as of consumer goods to be worn and
enjoyed in more and more homes. David Shields, in his discussion of the British
mainland colonies and the West Indies, explains that the economy of the British Empire
permitted “courtship talk, fashion, dress, luxury goods, places at court…” Sarah Knott
maintains that the “rise of the professions, the spread of newspapers, the purchase of new
consumer goods, and the pursuit of social aspirations of refinement brought the eastern
seaboard into greater cultural proximity with Britain.” Those living in England and
America maintained similar “notions of sensibility,” and such ideas had spread across the

\textsuperscript{21} John Lewis Gervais to Henry Laurens, \textit{The Papers of Henry Laurens}, ed. Philip M. Hamer (Columbia:
Atlantic through sentimental and medical literature. Knott points out that their shared sensibility could contribute to a sense of belonging, but it also contributed to American opposition to British regulations.

In accordance with Knott’s view, Timothy Breen illustrates the language of consumerism in America to demonstrate a connection between consumer culture in America and Britain, which imports from Britain made possible. American consumer taste became associated with loyalty to either Britain, or to American independence. Participation in boycotts acted as a unifying force for the diverse colonists. Breen quotes “Philo Publicus” who, in 1764, claimed that “we have grown more Luxurious every Year, so we run deeper and deeper in Debt to our Mother Country,” and this showed that Americans had “taken…Steps to Ruin.” Knott argues that sensibility in America needs to be placed in an Atlantic context. Once sensibility in the American Revolution is considered with “histories radiating from provincial Scotland, from radical and reactionary London, and from centers of the French empire,” it “is a story of transnational contingency and struggle, not national teleology.” Philadelphians, like the Irish in Dublin, imported “a widening array of…commodities,” sought British fashions, and shared similar entertainments like dancing and attending the theater, occasions and experiences articulated in the language of sensibility. Both Knott and G.J. Barker-Benfield find that sensibility pervaded American life by the time of the American Revolution.22

The consumer revolution made a culture of sensibility possible. Barker-Benfield explains that some Americans (following metropolitan habit) linked the ability to have leisure time and the money for consumption of goods with moral superiority. They saw women as being more sentimental, more capable of feelings, and therefore, more moral. So, it was hoped that women could reform the manners of men. “To luxuriate in the feeling that was bound up with the pleasures of literacy and consumption was a kind of freedom women could experience…” Those with enough material comfort to become sensible, feeling, and moral beings came from the “elite and middle ranks,” and were able to define themselves in opposition to “the great mass of human beings still living in age-old misery, unable yet to enjoy enough of the consumer revolution.” And, urban dwellers, “undergoing the consumer revolution, some of them attempting to implement a reformation of manners,” could view themselves in contrast to those in the countryside.23

As the new nation came into being, according to David Waldstreicher, the founding generation’s use of public celebrations, often promoting national sentiment and republican virtue, encouraged sentimental culture to reach a greater mass of people, aspiring to rise socially.24 Middle and upper-class Americans, living in the largest cities in the new nation, from New York to Charleston, were the most exposed to sensibility.

The transmission of sensibility across the Atlantic included the West Indies, as Shields’ Civil Tongues illustrates. The Royal Danish American Gazette published the following poem in St. Croix on April 6, 1771. Since the writer stated that he was seventeen years old and signed A.H., it is likely that Alexander Hamilton was its author.

23 G.J. Barker-Benfield, Abigail and John Adams, 8, 12, 293.
Perhaps Hamilton was more romantic than Hamiltonian scholars have assumed. His later writings show that he was a part of the culture of sensibility as much as the rest of his fellow revolutionaries. He and other founding fathers throughout the eastern seaboard spoke of “sense,” “sensibility,” and “nerves.” They articulated the physical “sensations” that accompanied emotional responses to various triggers. Hamilton, who was born in Nevis and spent a good part of his childhood in St. Croix, was influenced by the same trans-Atlantic, literary culture.

In the poem, the author witnesses his beloved “rising sweetly blush’d/ By far more artless than the dove…” A blush was the physical response that showed a girl’s modesty and the poet assures us that it was authentic. In the eighteenth century, thinkers, revolutionaries, and literary figures stressed the importance of sincerity. Artifice was immoral. Someone who lacked sensibility could lie and pretend to be affected in an attempt to trick a moral, sympathetic person into compromising situations that could lead to the person’s ruin. “A rosy-red o’er spread her face and brighten’d all her charms,” and this involuntary response, endeared her to the writer. He was also smitten because he and the object of his desire shared the same response to being near each other, as “Our panting hearts beat mutual love” illustrates. Her “sighs” further demonstrate the influence of sensibility.

If Hamilton was the author, it shows that he was a part of the culture of sensibility before he emigrated from the West Indies, before his immersion into New York culture. Of course, it is possible that Hamilton was not the poet in question. Hamilton, whether
the author or not, was exposed to such language before he left the West Indies. As we shall see, Hamilton’s contemporary, Elizabeth Gouverneur, wrote in the same language.

**Isaac and Elizabeth in St. Eustatius**

Elizabeth and Isaac Gouverneur Junior were living in St. Eustatius by the late 1770s and were married there in 1778. It is unclear when they arrived, or if they were born on the island. Isaac came from a merchant family that had connections in Curaçao since 1650 and New York since 1663. Nicholas (b. 1713) and Isaac (b. 1721) were brothers who traded between St. Eustatius, Curaçao, and New York. Nicholas and his brother Samuel (b. 1720) both had sons named Isaac, so there is some doubt as to which was Isaac Gouverneur Junior. Still, the evidence leans toward Samuel being Isaac Gouverneur Junior’s father, which would mean that Isaac was born in 1749 and was the brother-in-law of Peter Kemble and Lewis Ogden, who served as witnesses in Isaac’s divorce trial. This brief account of Isaac’s family illustrates its connections with New York and the Dutch West Indies; so, even if Isaac was not born in St. Eustatius, it is probable that he was familiar with the island since his childhood. Elizabeth Gouverneur was most likely Elizabeth Peachman Gouverneur who was born in 1760 and died in 1831. Elizabeth’s mother and her merchant step-father, Cornelius Stevenson, still resided in the Dutch West Indies in the late 1780s, so it is conceivable that she was originally from the West Indies. The birth years for each indicate common ages for a man and woman to marry in the late eighteenth century; Isaac would have been around twenty-nine and Elizabeth would have been about eighteen years old. The couple lived together on the island only until 1781, when Isaac was taken prisoner by the British during the

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American Revolution. The Chancery Court records from their divorce case provide the most information regarding their residence in the West Indies.²⁶

Prior to granting a divorce, the Court of Chancery required proof that there was actually a marriage to dissolve. The Court of Chancery required witnesses to attest that a couple was married, and it is these depositions that indicate that the Gouverneurs lived and were married in St. Eustatius. Nancy F. Cott explains that informal marriages were often acceptable during the colonial era. Courts would have recognized marriages as valid with evidence of the couple’s “reputation and cohabitation.” Couples in England, Scotland, and Wales also married informally. Informal marriages were less expensive, and the couples could then self-divorce.²⁷ New York State recognized informal marriages, which required the consent of both parties and proof of cohabitation, and did not require a formal state license until the twentieth century. Regardless, the distance between New York and St. Eustatius and the limits of late eighteenth-century

²⁶ Isaac Gouverneur v. Elizabeth Gouverneur, 1787-89. New York State. Court of Chancery, Miscellaneous files, 1772-1847, J0087-82 Box 64 G-96, New York State Archives. William Pelletreau, *Historic Homes and Family History of New York* (New York: The Lewis Publishing Company, 1907), 1:143-167. *The New York Genealogical and Biographical Society* (New York: New York Genealogical and Biographical Society, 1939), 70: 134-138. *New York Marble Cemetery Records, New York City, NY 1830-1937* [database on-line] (Provo, UT: Ancestry.com Operations Inc., 2000). Hamilton, *Papers*, 4: 70-71, 26: 462. There is no birth year listed for Nicholas Gouverneur’s son Isaac, but considering the birth years that are given for some of his children Isaac was probably born in the late 1740s. So, even if Isaac Gouverneur Junior was the son of Nicholas, he was probably still born around 1749. The Mint Museum holds a portrait of an Isaac Gouverneur painted by Gilbert Stuart. The portrait is dated 1793-1795, when Isaac Gouverneur Junior would have been in his mid-forties. His uncle Isaac would have been in his seventies; he died on September 24, 1794. James St. L. O’Toole, a senior appraiser of the New York Chapter of American Society of Appraisers, in a February 27, 1976 appraisal letter identified the gentleman in the Stuart portrait as Isaac Gouverneur, who was captured by the British in 1781 on the island of St. Eustatius, and who was also married to Sarah Staats. But Sarah Staats was married in 1704 to Isaac Gouverneur Junior’s grandfather, another Isaac, who had been born in 1673 and certainly was not alive at the time Stuart was painting. The portrait shows an elderly man who I believe was Isaac Gouverneur Junior’s uncle, Isaac Gouverneur, notwithstanding the claim by the Mint Museum that the Isaac in the portrait was captured by the British in 1781. James St. L. O’Toole, *Letter of Appraisal*, American Society of Appraisers, 27 February, 1976. Gilbert Stuart, *Portrait of Isaac Gouverneur*, c. 1793-1795, The Mint Museum of Art online exhibit, http://www.mintmuseum.org/_if_collections_detail.php?collection_id=3&item_id=61.

transportation would have made recovering documentation of the Gouverneurs’ marriage a strenuous task, not worth the effort. Moreover, the British devastated St. Eustatius during the war, so there is a good chance that any record of their marriage would have been destroyed before Isaac sued for a divorce. Nonetheless, their friends and family agreed that the couple was married, and some pointed out they were married in St. Eustatius.

One of Elizabeth’s letters to Isaac was included as proof of their marriage, and three witnesses also confirmed their marriage. Cornelius Stevenson testified in January 1788 “that he was Present at the intermarriage of the said Isaac Gouverneur Junior and the said Elizabeth Gouverneur about eight or nine years last past but which of the said years he could not Say with Certainty at St. Eustatia in the West Indies….,” Stevenson was probably Elizabeth’s stepfather since he was referred to as the “husband of Elizabeth’s mother” in court documents. Peter Kemble, a business partner of Isaac, “said on his Oath aforesaid that he had known the said Isaac and Elizabeth in the West Indies, and that they Cohabitated together as such in St. Eustatia in the West Indies aforesaid and often afterwards to Wit, at the City of New York….” Another New York City merchant, Nicholas Hoffman, informed the Court that he “had known the said Isaac and Elizabeth in the City of New York aforesaid since the year one thousand seven hundred and eighty three… That for a Considerable part of the time he had known that the said Isaac Gouverneur Junior and Elizabeth Gouverneur cohabitated Together as husband and Wife and that as such he had seen them in bed together…”28 Although Hoffman seems to have not known the couple at the time of their marriage, he stated that the couple had lived

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together as man and wife. Since it was assumed that cohabitation proved marriage, Hoffman was providing evidence that Isaac and Elizabeth were married.

James McHughes, a Master of the Court, reported on the number and age of the children born during the marriage. Besides Elizabeth’s son, whose birth had prompted Isaac to petition for a divorce, there was one daughter, Susannah, who was “of the age of Nine or thereabout.” Since the report was given in January 1788, Susannah was probably born around the beginning of 1779. McHughes’s report and Stevenson’s testimony, considered together, suggest that Isaac and Elizabeth were probably married in 1778, if not earlier. Although it is possible that McHughes’s report recorded the wrong age for Susannah, it is more likely that Stevenson was mistaken in recalling the date of the marriage since he clearly stated his uncertainty about the exact year. There is a chance that Susannah was born before the couple was married, but this is unlikely because none of the deponents noted it. Their omission of such a fact would be surprising, especially considering that deponents in divorce cases did not hesitate to discuss the character of the complainant or defendant. In addition, McHughes’s report stated “that there were two Children living of the marriage,” meaning the children actually born while Isaac and Elizabeth were married and not the biological children of Isaac and Elizabeth. Considering that Elizabeth’s parents still resided in the West Indies in the 1780s, it is fair to suggest that Elizabeth lived in the West Indies prior to her marriage with Isaac and that the couple had met in St. Eustatius, or one of the other West Indian islands.\textsuperscript{29}

In addition to the court records, Hurst’s discovery of the captured business correspondence of Curson and Gouverneur, a trading firm controlled by Samuel Curson and Isaac Gouverneur, further sheds light on Isaac’s time in St. Eustatius. Hurst found a

\textsuperscript{29} Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
letter to Curzon and Gouverneur that was dated May 15, 1779. The “letter seems to be a somewhat tardy acknowledgement” of a September 14, 1778 letter by Curzon and Gouverneur. Hurst’s findings suggest that Isaac was living at St. Eustatius at least from 1778 until his imprisonment in 1781.  

Still, the Gouverneur family’s previous part in clandestine trade during the French and Indian War, and Isaac’s later role in the American Revolution suggests a broader timeframe. Isaac’s uncles, Nicholas and Isaac Gouverneur, who had been partners in New York City, St. Eustatius, and the Dutch island of Curaçao, had a “particularly active” trade between New York and Curaçao during the French and Indian War, which began in 1756 and ended in 1763. Clandestine trade had been conducted between France and America during that war, and “Saint Eustatius was the most important of these entrepôts…‘Though very inconsiderable in extent and produce, yet [St. Eustatius] drives a great smuggling trade,’ wrote one [mid-eighteenth century] observer.” The Gouverneurs had a presence on the Dutch West Indian islands during the French and Indian War, and Thomas M. Truxes credits such trade connections, even during wartime, to the “Dutch preference for free-flowing Atlantic commerce [that] lived on in New York long after the peaceful transfer of the city from the Dutch to English hands in 1664, and it defined the character of wartime trade.” Isaac continued this tradition during the American Revolution, so it is reasonable to believe that Isaac had been a merchant and traded with the Americans from his post at St. Eustatius since the beginning of the American Revolution. Isaac probably lived there from the mid-1770s to 1781.

30 Hurst, Golden Rock, 67.
32 Truxes, Defying Empire, 24.
During the early years of their marriage, they would have been surrounded by a vibrant and diverse marketplace. Isaac and Elizabeth had lived at a center of global trade, which, in the eighteenth century, included trade in human flesh. While in St. Eustatius, Isaac and Elizabeth would have been surrounded by slaves, including the slaves they owned. “In 1781 the population of St. Eustatius was ‘reckoned to be about 1200 whites among whom are people of all nations and about 1600 negroes.’”33 Their move to New York City and Elizabeth’s stay in Philadelphia did not remove them from this reality. The “…little Negro Girl about Eight or Nine years of Age…” who “…Always slept in the Bed Chamber with…” Elizabeth shows the remnants of slavery in Philadelphia, which had begun gradual abolition five years before Elizabeth arrived at Robert Stevenson’s house.34

The couple had experienced tumultuous times during their marriage, even though Elizabeth claimed to remember that she was “Once happy Enough to be [his] Wife.”35 It may well have been a stressful period. Stevenson and Isaac were merchants in the Dutch West Indies during the American Revolution, and, as we have seen, Isaac had conducted contraband trade with Americans through St. Eustatius during the American Revolution. On the same day that Britain declared war on the Netherlands, it sent orders to Admiral George Rodney and Major-General John Vaughan to capture St. Eustatius.36 Rodney received the orders on January 27, and several days later he requested information on “the present Situation of Eustatia, its Forts, Forces, and some good Pilots….” from

34 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
36 Tuchman, First Salute, 92.
William Matthew Burt, the Governor of the Leeward Islands. Without prior warning, Rodney and Vaughan captured St. Eustatius on February 3, 1781.

Edmund Burke, in the House of Commons, offered a condemnation of Rodney and Vaughan’s “inhumanity” as he argued that the inhabitants of the island were protected by the British Empire after the island had been captured. According to Jameson, Rodney and his men were particularly harsh on the Jews on the island, which had served as a relatively safe and prosperous haven for them; they expelled them with a day’s notice, without their families, and with “the linings of their clothes ripped up in search of money. Eight thousand pounds sterling were obtained in this way…” Rodney had treated the inhabitants like prisoners after he took the island, and he confiscated the goods held at the island, which have been estimated to be worth 3 million pounds sterling. Barbara Tuchman suggests that while many critics, then and since, claim that the nature of the occupation was the result of Rodney’s greed for St. Eustatius’s wealth, his “outrage and desire to punish the traitors” was at least as significant a motive for Rodney and his men staying “too long on the island.”

Rodney expressed his and Vaughan’s desire to transform St. Eustatius from “‘the greatest emporium upon earth,’” to a “‘mere desert…’” because “‘this rock…has done more harm than all the arms of her most potent enemies and alone supported the infamous American Rebellion.’” Rodney stressed the significance of his capture to the government, but, as Tuchman points out, France’s formal alliance with the Americans in February 1782 had decreased the significance of St. Eustatius’ role in aiding the Americans. Tuchman contends that the British government focused on preventing

merchants from supplying arms to the Americans instead of seriously considering the implications of French aid to the Americans. She writes, “Ministers did not act to prevent a siege of General Cornwallis’ army at Yorktown because it was a contingency they never conceived of as happening…”  

Apparently, Rodney’s view of the significance of his conquest was in accordance with the Ministers’ outlook.

Perhaps Rodney’s assessment was not completely accurate, but his perception of the situation is important to understanding his actions and to the fate of Isaac Gouverneur. Tuchman explains that the “objects of Rodney’s sternest wrath were British merchants of both Statia and, particularly, St. Kitts who had been selling arms to the enemy for use against their own countrymen.” Samuel Curzon and Isaac Gouverneur, business partners, were American agents of the Continental Congress and had orchestrated the contraband trade. Their names had already become known to the British with the confiscation of Henry Laurens’ papers, which had implicated them in the trade. Rodney sent Curzon and Gouverneur to London on the ship, Vengeance, to be tried for high treason.

Once in London, Curzon and Gouverneur were imprisoned, as Laurens had been, in the Tower of London. Undersecretary William Knox was in charge of the two men, and “‘nobody was allowed to see them…unless they obtained his permission. James Lovell, of the Continental Congress’s Committee of Foreign Affairs, had pushed for their release. Lovell wrote to Benjamin Franklin on May 9, 1781 to request his “…particular attention to the exchange of these persons…” because it would “…tend to give confidence to all, who being connected specially with Congress are exposed to captivity,

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38 Tuchman, First Salute, 98-100, 107.
and will also very particularly oblige the relations of these unfortunates, who have requested Congress to mention these circumstances to you.”\textsuperscript{40} Lovell believed that the Americans should aid people like Isaac Gouverneur because it would show good faith on their part. In turn, it would assure people who had run great risk in aiding America’s cause that America would return the favor.

Lovell’s letter shows that Curson and Gouveneur were “stripped of everything but their wearing apparel; their books, papers, and slaves having been taken from them, and Mrs Gouverneur, with a young infant, turned out of doors.” The British capture of the Gouverneurs’ home provides personal details of Isaac, and shows that it was the Isaac Gouverneur who petitioned for a divorce from Elizabeth in 1786. Their “young infant” in 1781 fits with Stevenson’s 1788 testimony that their daughter Susannah was about eight or nine years old, which further supports that the Isaac Gouverneur who was sent to the Tower of London was Elizabeth’s husband, and not one of his relatives who shared the same name. What is more, Isaac’s arrest, the eviction of his family, and the confiscation of his property provides a closer view of the extent of the British invasion. To be sure, Lovell wrote that “Mr Samuel Curson and Mr Isaac Gouverneur, Jun. of St Eustatia, after that place was taken, were sent to England,” and were treated with “severity…in consequence of their acting as agents to Congress…”\textsuperscript{41}

Gouverneur and Curzon were freed after the war in 1783, but Curzon “died soon thereafter.”\textsuperscript{42} Isaac could not return to the life he had before the war; the British invasion had destroyed the island’s position as an entrepôt. Nicholas Hoffman’s testimony, 

\textsuperscript{40} James Lovell to Benjamin Franklin, 9 May 1781, \textit{The Diplomatic Correspondence of the American Revolution}, 208.
\textsuperscript{41} James Lovell to Benjamin Franklin, 9 May 1781, \textit{The Diplomatic Correspondence of the American Revolution}, 208.
\textsuperscript{42} Hurst, \textit{Golden Rock}, 221. Tuchman, \textit{First Salute}, 99.
mentioned earlier, stated that Elizabeth and Isaac had been living in New York in 1783, so the couple moved to New York immediately after Isaac’s release. They were in all likelihood motivated by St. Eustatius’ dismal economic situation. Moreover, Isaac had economic ties with New York, and may have also had more political connections.

The Gouverneurs’ travel and trade between St. Eustatius and New York, along with Elizabeth’s stay with a relative in Philadelphia, demonstrates the personal interconnections that existed between the Dutch West Indies and the port cities of what became the United States. The significant trade routes carried more than physical goods; they also contributed to the transmission of culture. The culture of sensibility that would affect Elizabeth’s view of her life followed the trade routes.
Chapter 2

Novel-Reading and Elizabeth’s Perspective

In May 1785 friends had sent Elizabeth away from New York City to live in New Barbados, New Jersey because they believed her “Outrageous and Violent Behaviour…towards her husband…” was making him ill. She did not stay in New Jersey long because she heard that her mother was supposed to visit Philadelphia, so she moved to the house of Robert Stevenson, her step-uncle, in Philadelphia where her mother Susannah and her step-father Cornelius Stevenson would stay when they arrived in June. Elizabeth stayed in Philadelphia for about a year, and returned to New York in May 1786. At some point during her stay in Philadelphia, Elizabeth had an affair with James Cadell, Robert’s apprentice, who lived in the same house. The dramatic marital conflict behind Elizabeth’s stay in Philadelphia suggest that Elizabeth was not a submissive, deferential wife and that Isaac was a less than tender and affectionate husband; moreover, her affair with Cadell shows she was an unfaithful wife, and Isaac was a cuckold. They had failed to live up to their society’s ideal, which applauded chaste wives and financially responsible men who protected and guided their wives. Elizabeth’s letters show that she wanted to be forgiven, for her reputation to be somewhat redeemed, and not to be abandoned by her family. Her story suggests that novels really did influence her; at the least, they influenced the way she described her marriage and her affair.
After her affair, Elizabeth urged Isaac to “Never let my poor child read a Novel or Romance these, I am sure helped ideas in my head which perhaps I never would have had…”\(^1\) She wrote this either to reconcile herself with Isaac, to clear her conscience, or because she feared the socio-economic consequences of her actions. In any case, her claim that novel-reading led to her ruin indicates that she shared her society’s belief in the power of novel-reading to create unfaithful wives who had been misled by fanciful stories of love and attraction. Critics of novel reading in the eighteenth century abounded. Cathy Davidson points out that a number of influential Americans (like their metropolitan British contemporaries) condemned the novel, including Benjamin Rush, John Adams, Thomas Jefferson, Jonathan Edwards, and Noah Webster, as did influential women, like Hannah More. It was felt that the novel undermined societal hierarchy; Davidson’s work supports Wood’s ‘democratization of the mind,’ Jay Fliegelman’s “revolution against the patriarchy,” and Rhys Isaac’s view of the decline of gentry in people’s minds. Isaac writes of the contribution of novels to this process: “familial relationships were tending to be controlled less by formal rules and increasingly by concern for individual feelings. Personalities were thus being radically altered. In the age of sensibility, patriarchy was being sentimentalized into paternalism.” These trends were already underway before the American Revolution, but the American Revolution accelerated them.\(^2\) Critics of the

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\(^1\) Isaac Gouverneur v. Elizabeth Gouverneur, 1787-89. New York State. Court of Chancery, Miscellaneous files, 1772-1847, J0087-82 Box 64 G-96, New York State Archives.

novel argued that it could undermine the hierarchy within a marriage by producing unfaithful or immoral wives.

The Effects of Novel-Reading

Moral lessons provided an essential component of eighteenth-century novels, but as Davidson points out, critics of the novel argued that the inclusion of “virtuous sentiments to ‘loose novels’” was “even more dangerous…since ‘when they are mixed with seducing arguments, it requires more discernment than is to be found in Youth.’” Linda Kerber explains that the “Republican Mother” was supposed to avoid novel reading because “She was to observe the political world with a rational eye, and she was to guide her husband and children in making their way through it.” Novels either distracted women from more productive duties, or they would lead women to follow their passion instead of their reason. She points to David Hume, who claimed that “Novels encouraged...an expectation of human perfection and a belief that love is the primary ‘passion which governs the male world’ rather than avarice, ambition, vanity, and a thousand other passions’ that in fact regularly overcame love.”

Kerber goes on to note that although people like Hume, Rush, and Mercy Otis Warren urged women to read history instead of novels, the histories were largely irrelevant to women’s lives. Consequently, women continued to read fiction, even if they felt guilty about doing so, because it made women’s lives the central theme. In fact, Samuel Richardson and Daniel Defoe, among other authors, blurred the lines between history and fiction; Richardson’s *Clarissa*, as Kerber points out, is after all “The History of a Young Lady.” Kerber agrees with Ian Watt’s assessment that a “novel that

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masqueraded as ‘true history’ sought to claim the respectability of history and the appeal of romantic fiction: it could criticize fiction at the same time that it capitalized on the taste for romance.” Michael McKeon also notes the negative view toward fiction; “If stories cannot claim their historicity, they are romances, and cannot be taken seriously by writer or reader; they will not be ‘improvable’ and they will fail to effect any moral and spiritual improvement.” Writers, to have an effect on society, should write non-fiction.

Still, the line between fiction and reality seemed blurred in society at large. McKeon argues that skepticism raised doubts on the validity of ‘true history,’ and raised the question of ‘what is truth.’ Truth was “to serve the end of inculcating Christian faith,” and early novelists claimed that their writings were “to aid the cause of teaching moral truth.” By doing so, novelists ended up claiming that they were, on some level, writing history because of its effect, not the factual accuracy. Defoe claimed that he wrote “allogorick History.” McKeon connects the abstract, or “imaginary,” world of financial investment and public credit – essential elements of capitalism – to the uncertainty over what constituted truth. Additionally, the rise of capitalism confused social rankings in English society, as honorific titles did not always align with economic level. The old order had been based on birth and social rank, and the moral order had been associated with it. As social order became confused, the moral order needed revision. Richardson’s enormously influential novels (especially *Pamela*) illustrate both that disruption of social order and his insistence on producing a new moral order based on marriage and the family. Notwithstanding the factual inaccuracy of novels, the genre did provide realistic stories. Kerber and Davidson maintain that history could provide a guide for men’s lives and novels could provide a guide for women’s lives because of their greater relevance for
women; “reading fiction could play a very important part in a woman’s private life and imagination.” Davidson also found that men read novels and were influenced by them.4

Barker-Benfield points out that Abigail Adams defended sentimental fiction against critics who claimed it led women to “fantasy, masturbation, being seduced, or adultery.” Abigail thought a person “must have an abandoned, wicked, and depraved heart, who can be tempted to vice by a perusal of Samuel Richardson’s works.” Abigail believed that Richardson’s novels “improved the reader’s sensibility” as her following statement suggests: “a person cannot read them without being made better by them, as they dispose the mind to receive and relish every good and benevolent principle.” Lucy Cranch, Abigail’s niece, thought that many sentimental novels “if they do not lead directly to Vice, tend to enervate the mind and rob it of the strength, which is necessary to make it stem with resolution the torrent of folly which too often prevails.”5 Fiction, it was thought, could lead women to have sex out of wedlock because novels promoted sensibility. Sensibility could have a positive effect by making people more in tune with their moral sense, but its mechanical nature, potentially irresistibly, meant that it could have a negative effect by making people more in tune with their sensual and passionate natures. Too much passion could be destructive.

Abigail’s views resulted from her view of sensibility. Her niece’s view resulted from her fear that feelings could get out of hand and would not be checked. It was good for a person to be a person of feeling, to feel for others in distress. Giving in too much to

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feelings posed dangers, however, especially for women according to the gendered view of sensibility. If a person felt too much, the person could be taken advantage of by those who lacked sensibility. Moreover, feelings could have excessive influence if not guided by reason. Keith Thomas argues that British social ideas had more of an influence on Americans by the mid-eighteenth century because of the decline in Puritanism and the rise of an affluent urban class in the American colonies. British literature was popular in the American colonies throughout the eighteenth century. Thomas calls Defoe and Richardson, along with other English novelists, “reform writers.” According to Nancy F. Cott, they “portrayed sexual promiscuity as one of those aristocratic excesses that threatened middle-class virtue and domestic security.”

Thus, the novel remained controversial, and the question of whether it was a moral or an immoral influence remained unanswered, perhaps, because it could encourage humanity and also raise marital expectations. Still, it is possible that the overall challenge to hierarchy (including that of gender) during the eighteenth century, as Isaac, Wood, Fliegelman, and Davidson illuminate, unnerved elite men and some women who were expressing their fear of the changing landscape by declaring that novels would cause disruptive changes to sexual relations and to society at large.

Thomas Jefferson thought that fictional, as well as true stories, could affect how people acted. He argued, in 1771, that “every thing is useful which contributes to fix us in the principles and practice of virtue,” and so he claimed that Laurence Sterne’s A Sentimental Journey had a beneficial effect on American society. Jefferson believed that people acted virtuously after they witnessed or heard about virtuous acts: “any single act

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of charity or of gratitude, for instance, is presented either to our sight or imagination, we are deeply impressed with it’s beauty and feel a strong desire in ourselves of doing charitable and grateful acts also.” It did not matter, according to Jefferson, if “Sterne really went to France, whether he was there accosted by the poor Franciscan, at first rebuked him unkindly, and then gave him a peace offering…,” because “we are pleased with the subsequent atonement, and view with emulation a soul candidly acknowledging it’s fault, and making a just reparation.” Jefferson thought that the feelings people had while reading fiction could lead to good ends. The feelings of sympathy, whether true or not, could encourage people to be virtuous.

Jefferson was not the only critic to think that Sterne’s work could have a positive influence. In an extract from a 1767 issue of the Gentleman’s Magazine, an anonymous author argued that Sterne’s works posed no danger because “it will disgust a delicate mind, but it will not sully a chaste one.” In fact, he claimed that Sterne was “a friend to society…by connecting disgustful images with its gratifications.” In a 1767 letter to his friend Mrs. William James, Sterne maintained that his purpose in writing A Sentimental Journey “was to teach us to love the world and our fellow creatures better than we do – so it runs most upon those gentler passions and affections, which aid so much to it.” But Sterne’s own seriousness is questionable. In a 1767 letter to a nobleman, Sterne wrote, “I hope my book [A Sentimental Journey] will please you, my Lord, and then my labour will not be totally in vain. If it is not thought a chaste book, mercy on them that read it, for they must have warm imaginations indeed!” Sterne turned the table on his critics by claiming that he did not mean anything to appear indecent, and therefore if it appears so,
then it is the reader’s mind that is indecent. In an earlier defense of *Tristram Shandy*, Sterne employed a similar ironic tone. In his 1760 response to critics who claimed that women of character should not read *Tristram Shandy*, he wrote, “But for the chaste married, and chaste unmarried part of the sex ---- they must not read my book! Heaven forbid the stock of chastity should be lessen’d by the life and opinions of *Tristram Shandy*...”

As Sterne here illustrates, some criticized him for having a negative influence on society. In a 1761 issue of *The Monthly Review*, a critic condemned Sterne’s “strictures on the indelicacies with which it was interspersed, and which we attributed to the warm imagination of some young *Genius* in Romance.” Although the critic claimed it had overall merit, the “indelicacies” needed to be censured since Sterne was “a Dignitary of the Church of England...” More than two decades later, Vicesimus Knox, an ordained minister, wrote a critique of Sterne in an essay ‘On the Moral Tendency of the Writings of Sterne,’ and concluded that “divorces [had] multiplied since Sterne appeared...” He claimed that Sterne, who “displayed in private life, a bad and a hard heart,” was “the grand promoter of adultery, and every species of illicit commerce...” because the “excessive sympathy at first sight...which is but *lust in disguise*, and which is so strongly inspired by the *Sentimental Journey* and by *Tristram Shandy*, have been the rush of thousands of our countrymen and countrywomen...” Knox believed Sterne displayed genius because it is “infallible proof of real genius, when a writer possesses the power of

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shaking the nerves, or of affecting the mind in the most lively manner in a few words…”\textsuperscript{12} The feelings that Sterne’s writing provoked encouraged, according to his critics, licentious behavior by people attempting to create such sensations.

The debate over Sterne’s work demonstrates that people in the eighteenth century believed that reading could powerfully influence people’s behavior, particularly women’s. Knott demonstrates that Anne Livingston, also known as Nancy Shippen, “would cast herself in terms of distressed virtue” in her journal (1777-1783). Anne had married Henry Beekman Livingston, a member of a wealthy New York family, who proved to be an unfaithful husband. She left him and returned to her parents’ home but feared that he would take their daughter away from her. Alan Taylor provides another illustration of the influence of novels. He claims that William Cooper’s daughter, Hannah, was similar to “many young women in England and America…[who] sought to define herself by emulating the heroines found in didactic fictions.” He compares Hannah’s “speech and writing” (from the 1790s) that was “increasingly preoccupied with preparing for death,” to the notes that she took from “sentimental fictions [that] were mournful tales…”\textsuperscript{13}

**Infatuation and Fictional Worlds: Patty Rogers and Benjamin Rush**

Patty Rogers was a young woman from Exeter, New Hampshire who kept a journal in 1785. Rogers’ journal sheds light on the cultural expectations for courting rituals. Patty recalled her “distress last Summer,” after she had fallen in love with

\textsuperscript{12} Extract from ‘On the Moral Tendency.’ *Critical Heritage*, 252.

William Woodbridge, whose cognomen was Portius, presented as a man of feeling and
virtue in Addison’s Cato (1713).¹⁴ Although Patty’s entries suggest that there was an
obstacle, such as his lack of education, that had kept them apart, her later entries indicate
that he stopped courting her in favor of another girl. Later, when Philamon showered her
with attention, she guarded her heart because she would not “consent a second time to be
a fool!” Patty read novels and wrote in her journal using similar words and phrases. Her
discussion of death also follows the sentiments expressed in sentimental novels. She
wrote of her desire of the afterlife and pointed out the consequences of not carrying out
her duties. She blamed her sensibility for her desire “to leave this World of Sin of Sorrow
pain & grief – A World! A censorious World! Unfit for tender hearts!”¹⁵ She believed
that if she felt less, then she would be better suited for this world. She confided to her
journal about the times she cried at night, or the times when she just could not stop
thinking of Portius. As her journal shows, she had time to reflect on her encounters; she
also had time to read novels, which helped her analyze these encounters.

Her second love interest was Philamon, who she believed was “worthy” and
“amiable,” but she found fault when “he took some liberties that would not have been
strictly decent had they come to sight.” She thought it was possible for him to take such
liberties because “he thought he could make an easy conquest of mine [her heart], & then
torment me with neglect & coldness.” She blamed herself for the incident; she must have
done something to provoke such behavior, especially because he was a worthy man. She
feared that he did not respect her and that was why he treated her in that manner. She

¹⁴ Lisa A. Freeman, “What’s Love Got to Do with Addison’s "Cato"?” Studies in English Literature, 1500-
1900, 39, No. 3 (Summer 1999), 463-482.
¹⁵ Patty Rogers, diary for the year 1785, pp. 4-5, 14-15, 21, 38, Rogers Family Papers, 1731-1804,
expressed her fears to him, and he assured her that he thought she was a good girl. Then, as she continued to describe this encounter, “he put his hand on my Bosom I with avidity attempted to snatch [sic] it away but found he was too strong for me…” She chided him again for his “immodesty.” A young man was expected to not cross boundaries, yet when he did, the young woman felt guilty. Patty feared that she, not Philamon, was to blame. Patty had internalized the view that virtuous republican women could make men more virtuous, a central tenet of sentimental novels.16

Patty used the cognomen Philamon, or Philammon, when discussing Dr. Samuel Tenney. She may have been thinking of Jonathan Swift’s poem, *The Story of Baucis & Philemon,* “Imitated, From the Eighth Book of OVID,” although Swift altered the original story. In the original, Philemon, a poor man, and his wife, Baucis, offered to aid Jupiter and Mercury, who were in disguise. The couple “had been wedded in that cottage in their younger years, and had grown old together.” Their love made them content, notwithstanding their poverty, and they had an egalitarian marriage; “It was no matter if you asked for owner or servant there: those two were the whole household: they gave orders and carried them out equally.” The gods changed their cottage into a temple, and they offered the couple one wish: Philemon, after discussing the wish with Baucis, responded that they wanted to live as priests in the temple, and that neither one would outlive the other. Swift changed Baucis and Philemon’s house into a church, instead of a temple, and Philemon became a parson. At the end of their lives, the couple was transformed into two trees, and this is where Ovid ended the story. Swift showed the two trees intertwined, and explained that the Philemon tree died after a parson cut down the Baucis tree. The idea that the happiness of each depended on the other probably led

Rogers to use Philemon as Tenney’s cognomen. Patty wrote about Samuel Tenney courting Tabitha Gilman while he continued to pay attention to her. Patty did not care for Tabitha, yet she could not explain why. Tenney ended up marrying Tabitha.

Davidson believes that Tabitha Gilman Tenney’s 1801 novel, *The Female Quixotism*, was in part about Rogers, who was from the same town as Tabitha. Tabitha wrote the novel after her and her husband, Dr. Samuel Tenney, moved from Exeter, New Hampshire to Washington, D.C. The novel criticized women who read novels, and became too obsessed with the romantic world presented in them. In Rogers’ 1785 journal, she noted that she had been accused of having “too much sensibility.” Patty loved reading novels, and she illustrated the pain she felt at failed courtships in a language similar to novels. Davidson illustrates that Patty “imitates the style of her favorite author, Laurence Sterne.”

If Patty was the inspiration for Tabitha’s novel, then it shows the complicated relationship between reality and novels; Patty’s worldview was influenced by her novel-reading, but she also influenced a novel writer. Nonetheless, Patty’s narrative of her life suggests that novels did influence the way she thought and wrote about her life and, in particular, her love-life.

Patty’s journal shows a blurring between fiction and reality. Christine Stansell suggests that “Imagination and need, passion and practicality flowed together into courtship and marriage…” Allen Michie illuminates an eighteenth-century view that girls were seen as

more impressionable than boys, “and they are therefore ‘tempted to form themselves upon any characters, whether true or fictitious, which forcibly strike their imaginations.’”¹⁹ And, so it was with Patty. She could not stop thinking of her feelings for one, or the other, of her two possible suitors. Her daily life consisted of reading, eating, working, caring for her ill father, an occasional social outing, and encounters with the two paramours.

Benjamin Rush’s recollection of a past infatuation illustrates the sometimes blurred line between fiction and reality, and provides an explanation of why eighteenth-century men and women needed to restrain their passion unless reason permitted it. Rush had married Julia Stockton, who was 14 years younger than he, in January 1776, yet he never forgot his earlier infatuation with Lady Jane Wishart Belsches. He corresponded with Lady Jane during the spring and summer of 1784. Rush had known Lady Jane from his time as a student in Edinburgh. He expected his eldest son John to eventually study there, and he hoped that Lady Jane would introduce John “into companies that will polish his manners and at the same time improve him in principles and manners.”²⁰ Although he mentioned his son’s studies in the letter, he spent far more time recalling his fondness for Lady Jane. There is no evidence that Rush ever strayed from Julia, and he even explained that his wife knew of his affections for Lady Jane, and that Julia believed it was “what kept him so faithfully preserved.”²¹ He noted his wife’s physical beauty and pleasant voice, but claimed that “her temper, prudence, understanding, and excellent

accomplishments attracted and fixed my heart.” Still, Rush’s letter demonstrates his continued admiration for Lady Jane.

Rush continued his letter to Lady Jane with a description of his imagined encounter with Lady Jane’s daughter. Rush envisioned “approaching Miss Wilhelmina [Lady Jane’s daughter] in the meadows or in the park with his hat in his hand, bowing respectfully to her and afterwards gallanting her home, talking all the way of the interesting Story of Edwin and Angelina…” Rush had fancied himself Edwin and Lady Jane as Angelina from The Vicar of Wakefield, the 1766 novel by Oliver Goldsmith. In that story, suitors, including Edwin, had come to win the hand of Angelina, the daughter of a wealthy lord. She did not accept Edwin, who was not wealthy or powerful, even though she viewed him as intelligent, moral, and seemed to appreciate his sincerity.

Mr. Burchell, a character vying for the affections of the Vicar of Wakefield’s daughter, introduces a ballad that related the story of Edwin and Angelina. It describes the journey of Angelina, running away from the pain of having “scorned” Edwin, who she believed, had died of a broken heart. She meets a hermit, who takes in dispirited individuals in need of rest and substance, even though the hermit does not have much.

Here to the houseless child of want,
My door is open still;
And tho’ my portion is but scant,
I give it with good will…

Far in a wilderness obscure
The lonely mansion lay.
A refuge to the neighbouring poor,
And strangers led astray

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22 Rush, Letters, 326-327.
She told the hermit that the values she had seen in Edwin were all that mattered, even though she did not realize it at the time of the courtship. The tale continues with the hermit’s confession that he is Edwin.

‘Turn, Angelina, ever dear,  
My charmer, turn to see,  
Thy own, thy long-lost Edwin here,  
Restor’d to love and thee…

No, never, from this hour to part,  
We’ll live and love so true;  
The sigh that rends thy constant heart,  
Shall break thy Edwin’s too.’

And, Edwin and Angelina agree to live together forever. Rush cast himself as Edwin, a humble, intelligent, and morally astute man, who was generous despite his lack of fortune. The elusive ideal was that people chose their significant others based on moral virtue rather than wealth.

Rush’s relationship with Lady Jane had held elements of this ideal. If only money really did not matter at all, Rush could have been with Lady Jane. He cast Lady Jane as Angelina, the heroine who realized her true feelings and discarded any pride of position to be with the one she loved. In the ballad, Angelina notes “his [Edwin’s] passion touch’d my heart, I triumph’d in his pain.” She was ruled by her pride, and once Edwin’s attentions were gone, she realized her mistake. Her feelings are exposed by the “rising blush…bashful look, the rising breast…,” and her desire to die instead of living with the pain she felt from losing him, which shows the influence of the culture of sensibility on Goldsmith, a contemporary of Sterne’s, as well as Rush, a leading figure in the American Revolution and in the Early Republic. Rush’s association of their mutual infatuation with

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Edwin and Angelina’s triumph over the obstacle to their union shows that he continued to have feelings for Lady Jane. Financial obstacles had prevented their union.

Rush explained that the idea of telling the story to her daughter “excites my mind sensations so tender and so complicated that I cannot find language to describe them.” He apologized to her for the length of his letter and explained that it was because he had “recalled so many departed ideas…that it has inspired a melancholy frame of mind so delightful…” and that he would “never tire in indulging it.” Such self-indulgence was another characteristic of sentimental writing, a frequent source of criticism. He explained that her letters “awaken every power of the mind and agitate them alternately with the emotions of grief, friendship, and religion…”

His apparently chaste love affair remained a pleasant thought for Rush years after he was a settled married man.

Rogers and Rush’s use of fictional language or plots to help elucidate their feelings, reveals a gendered difference, which is expected given the generally accepted gender roles of late eighteenth-century America. Patty used fiction to deal with her unfulfilled romances. She took bits of her amorous experiences, and without other pressing distractions, allowed them to consume her as she questioned her actions, her virtue, and men’s intentions. She needed to restrain her sexual feelings in order to not appear as a loose woman, or a fool. Rush, on the other hand, had too much to occupy him. He had to resist acting on his sexual urges until he had set himself up in his profession. He needed financial security before becoming intimately involved with a woman, so that he could provide for her and the children produced from the union. His imagined encounter with Lady Jane’s daughter was his way of indulging the feelings he

had repressed because of the impracticality of having a relationship with Lady Jane when they had met. Despite the differences, both examples indicate that fictional plots could be employed to compensate for the shortcomings of the love ideal in relation to the reality of eighteenth-century life.

Elizabeth’s Story

It was the negative criticism of novels that influenced Elizabeth’s explanation of her affair. In the letter to Isaac, Elizabeth acknowledged that Isaac had done his duty in the sense of instructing her on how to be moral. Elizabeth wondered how “happy should I now be had I taken your advice…” Had she played the role of an ideal late-eighteenth-century wife, she would have listened to her husband and would never have had to defend herself against adultery charges. Since she claimed that her happiness depended on her being married, that her adulterous affair was going to lead to the end of that marriage, and that she blamed the affair on her novel-reading, it is feasible that Isaac’s advice to Elizabeth had contained a warning about the negative effects of novel reading. Her version of events makes sense within the context of those eighteenth-century critics who warned that novel reading could be dangerous because it affected its reader’s perception.

There is no record of which novels Elizabeth read, but some possibilities can be gathered from the remaining evidence. Richardson’s Clarissa was one of the most popular novels in eighteenth-century America, but by the second half of the century Richardson was rivaled by Rousseau, as well as Sterne; both writers allowed the further unleashing of sexual feelings. James Rivington, a New York bookseller, advertised the arrival of a book shipment. His 1761 ad highlighted the “New Eloisa; written by the ingenious Rousseau…” and declared that “it is the only Novel, that has been equally well

25 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
received with the celebrated Clarissa Harlowe, to which it bears some resemblance; only the New Eloisa, is allowed to be a more masterly and instructive Performance.”

According to Kerber, Rousseau’s La Nouvelle Héloïse, often mistranslated as Eloisa, was considered the “very worst example” of a book that encouraged the “passionate way of life as a course to be emulated.” Still, she argues that the influence of Rousseau on America has been overlooked because he was not cited in the Constitutional debates despite “the widespread popularity of Rousseau’s less theoretical works in America, particularly of Emile and Heloïse,” which had “significant, even revolutionary, things to say about women and their role in society.”

In any case, Elizabeth’s version of events reads very much like a typical “virtue in distress” novel. Cornelius Stevenson claimed that she “used to Employ the said James Cadet to procure Books for her Use from the Public Library in the said City of Philadelphia from lists she delivered to him…,” even though Elizabeth claimed Cadell picked out the books. The public library probably refers to the Library Company of Philadelphia, which had absorbed the Union Public Library, Association Library, and Amicable Library in 1769, about sixteen years before Elizabeth was in Philadelphia. “When the Reverend Manasseh Cutler visited Philadelphia in 1787, he paid his respects to the institution which had ‘become the public library of the University and City.’” The library’s catalogues from 1770 and 1789 both list popular novels, including Richardson’s novels, Rousseau’s Eloise, Goldstone’s The Vicar of Wakefield, and Sterne’s Yorick’s Sentimental Journey. The earlier catalogue contains more novels than the latter, and Henry Fielding is represented on the earlier list, but not the later one; it is possible that the later list may be incomplete, that the library lost volumes during mergers and moves,

or that criticism for novels made the Library less adamant about displaying all of its novels.27

Elizabeth’s account of the affair sounds similar to the plots of *Pamela* (1740), or *Clarissa* (1747-48), both popular examples of virtue in distress available to her. *Pamela* tells the story of a servant girl whose virtue led to her being rewarded with a marriage to a wealthy man. Pamela was a maidservant to a Lady B., who passed away right before the novel opens. As she explains to her parents, Pamela believes she is fortunate because Lady B.’s son, Mr. B., is going to keep her, among the other servants, employed in his household. Pamela’s parents fear Mr. B.’s intentions, but Pamela assures them of her virtue. She soon realizes her danger, however, after he attempted to rape her. Pamela writes, “And the Whole will shew the base Arts of designing Men to gain their wicked Ends; and how much it behoves the Fair Sex to stand upon their Guard against their artful Contrivances, especially when Riches and Power conspire against Innocence and a low Estate.”28 She desires death if her virtue is compromised.

The heroines of Richardson’s novels were attracted to their villains, the men who wanted to conquer them sexually without a wedding ring, so it is likely that Elizabeth could still style herself a victim even if she had feelings for Cadell. Pamela prepares to leave the luxury of Mr. B’s place and return to her humble home instead of risking her


28 Samuel Richardson, *Pamela; or, Virtue Rewarded*, eds. Thomas Keymer and Alice Wakely (1740; Oxford: Oxford University Press, 2008), 92.
virtue by staying; “I knew how to suit myself to the State I was returning to.” She alters her attire in order to return to her impoverished roots, yet she did not leave right away. The official reason for her staying longer was to finish his waistcoat, but her affections for Mr. B. undoubtedly influenced her delayed departure.  

Clarissa, according to her family, was to be married to Mr. Solmes, an unpleasant, unfeeling man who was only interested in gaining money. As her wedding date to Solmes approached, Clarissa agreed to meet Lovelace, the charismatic rake with whom she had been forbidden by her father from having any contact because of his feud with her brother. Fearing that her brother would be hurt in a duel with Lovelace, and motivated by her attraction for Lovelace, she continued her correspondence with him. Her correspondence escalated into a meeting with him because of her feud with her family over marrying Solmes. At their meeting, Lovelace was angry, according to Clarissa, that she would be Solmes’ wife. “He threw himself upon his knees at my feet. Who can bear, said he, with an ardour that could not be feigned, his own eyes glistening, as I [Clarissa] thought, who can bear to behold such sweet emotion?” She believed he was sincere and exclaimed that she had feelings for him; “Oh charmer of my heart…” Although he begged her to send him away, she did not. Clarissa’s feelings, like Pamela’s, prevented them from immediately fleeing their villains. They hoped their villains could be reformed; in Pamela’s case, Mr. B. was, but the same was not true for Clarissa.

By the end of her meeting with Lovelace, he had succeeded in kidnapping her. Clarissa, looking back on the incident, blamed it on her virtue; “I, vain fool, to be concerned for everyone; and nobody for me!” She was the victim of uncaring people

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29 Richardson, *Pamela*, 39, 41, 47, 55, 63-64.
because she cared too much. Still, she noted that she should have listened to her family, and “ought not to have corresponded with him.” She pointed out that Lovelace “is a very artful man” and a “wicked…contriver!” She thought the world would judge her without knowing the “artifices of the betrayer…” Lovelace’s perspective only helps to secure the view of Clarissa as a victim; her suspicions of his designs are validated. Lovelace sees his conquest of women as a game. Even after she was abducted, Clarissa wondered if she had been too harsh in her judgment of Lovelace because he is “extremely regardful and tender of me.” Mr. Bedford, Lovelace’s confidant, points out Clarissa’s “virtues and graces,” and denounces Lovelace’s plan to ruin her; “Permit me, dear Lovelace, to be a means of saving this excellent creature from the dangers she hourly runs from the most plotting heart in the world.”

Elizabeth asserted that Cadell, the apprentice she had an affair with, was a “villain.” It was Cadell’s lack of sincerity that had destroyed her being Isaac’s “once happy wife.” Cadell had devised a scheme, according to Elizabeth, to seduce her into acting immorally. She complained that “…had it not been for the Contrivance of a Villain I might now have been as happy as I could wish.” According to her, it was Cadell’s “artifice” that had destroyed her marriage. Elizabeth maintained her innocence because she never intended to have an affair. The elevation of feelings suggested to her that she was still virtuous because she never intended to be otherwise. She wrote to Isaac, “Did you but know my feelings on the Awfil occasion you would feel for me – But when the will is wanting is it …looked upon as the dreadful Sin of Adultery – They all Say there is

31 Richardson, Clarissa, 379, 381-387, 410-416, 512-514, 555.
32 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
proof that my Consent was given – but I deny it.” Elizabeth probably felt alone after being rejected by Isaac and their friends in New York, and so it is conceivable that she appreciated the attention she received from Cadell. Still, even if Elizabeth had been attracted to Cadell, she could still view herself as an innocent victim. Pamela had been attracted to Mr. B., and Clarissa had been attracted to Lovelace, yet both were still examples of virtue in distress. They faced repeated trials by men who “plotted” and “designed” their ruin. Mr. B. and Lovelace concocted elaborate schemes to achieve their ends. The women were supposed to be oblivious to these schemes as women were supposed to be innocent and so would not consider such things, yet very significantly, Richardson’s heroines replayed past events and conversations to uncover the scheme. Of course, both resisted until one was married and the other was dead.

It is impossible to know if Elizabeth believed her own story or if she was trying to avoid blame. Nonetheless, her claim that she tried to maintain her virtue but could not withstand Cadell without the aid of someone else is in accordance with a popular literary theme. Even if she had an ongoing, consensual affair with Cadell, her story suggests that she thought her version of events might be believed. Elizabeth complained that she was the victim of a villain. “But Oh my husband I cannot say that I broke them with my own Consent I held out as long as I was able…” In her letter to Isaac, Elizabeth lamented that “the Wretch got the better of me [when] he came into my Chamber about Twelve OClock at Night.” She assured her husband, “I called for the Girl, but she did not Answer me…” Elizabeth had no one to save her since she was “…in the third Story to Sleep and none other of the Family there but the wretch who I owe my Ruin to, whose Chamber was
According to Elizabeth’s version of events, if only someone else could have heard her cries, she would have escaped ruin, as Pamela had been helped by Mrs. Jarvis.

The disparities in class between Cadell and Elizabeth were not as great as Mr. B. and Pamela, but Cadell’s status as an apprentice would have impeded a respectable marriage, even if Elizabeth had not already been married. Cadell was apprenticed to Elizabeth’s step-uncle. Apprentices and other servants were seen as members of the family which employed them. In addition, Brian P. Luskey found that young men with social connections were much more likely to obtain an apprenticeship as a merchant’s clerk and gain self-sufficiency than men from lower social ranks. The riskiness of the market required men to trust each other, and consequently clerks and merchants relied on their reputations. Since Cadell was Robert Stevenson’s apprentice he was still dependent on Robert. Being successful in the future would require Robert’s recommendation after his term ended. As Elizabeth, from a well-to-do merchant family, fell for the “Artifice” of Cadell, who had not yet achieved recognition and independence, Richardson’s warning to poor girls to beware of rich men would not have been forefront of her mind. Still, Pamela, whatever the class and natural differences, could provide Elizabeth with the explanation or language to make sense of her situation, a virtuous woman (or so she thought) who never intended to be ruined.

34 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
Elizabeth’s writings imply that she understood the class elements involved in her situation. In her letter to Isaac, she stated that “I have by your Bounty always had Enough…” And she insisted that “applying to the Wretch who I owe my Misery to or being dependent on him for anything I would rather beg my Bread…” Elizabeth Gouverneur’s relationship with Cadell would have never been socially acceptable because Cadell was not yet established in his profession as Rush had not been. Elizabeth herself realized that Cadell was in no position to be a husband. In a letter to Isaac, Elizabeth asked “And do you Suppose I could prefer… a Poor Wretch as that as Philadelphia. How great is the difference between you…” Isaac was an established merchant, and Cadell was a lowly apprentice, so Cadell would not have been the rational choice. Elizabeth feared that she would be impoverished if she was formally rejected by her husband. In a letter to her mother, she wondered “if you and my Husband discard me, What is to become of me…”

Elizabeth wrote of her resignation to his will and that of her mother. “I will go and Stay in some part of the [world] wherever your goodness and Mama Pleases to Send me – and there dedicate the remainder of my life to Repentance and …Constitution for my unponderable Sin…” Once her affair became known, Elizabeth noted that it was “indeed now too late my happiness in this life is all flown never to return and I have only to look for Comfort to that God whose Commandments I have so …broken…” She believed her life after being divorced held dismal prospects and that religion played a role in how she, or her society at least, viewed the marriage contract. Elizabeth’s view of her future on earth and her repentance was also consistent with Richardson’s Protestant, as

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36 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96
37 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96
well as, sentimental message. Pamela and Clarissa both looked to the next world, and wished for death as an escape. To be sure, Pamela even referred to Lucretia, the Roman woman whose virtue led her to commit suicide after she was raped and whose death prompted the creation of the Roman Republic. Pamela maintains her virtue and is later rewarded by Mr. B marrying her. Clarissa was rewarded with death, and not a loving, financially beneficial marriage.

Jean H. Hagstrum, in *Sex and Sensibility: Ideal and Erotic Love from Milton to Mozart* (1980), discusses the association between passionate love, or lust, and death. In his analysis of Pope’s poem “Eloisa and Abelard,” Hagstrum explains that Eloisa “desires only death” because it “alone—not heaven, not a prolongation of Christian consciousness, not salvation following repentance—can still her racing pulses.” Her “intensity of a passion…requires so radical a cure as the final calm of death.” Hagstrum concludes that Pope “celebrates not the triumph of divine grace or theological dialectic but the glorious persistence of passion. He takes his place among the myth makers of modern love.” It was this view to which Rousseau’s notorious novel referred.

Although Elizabeth claimed to be Cadell’s victim, denying that she had consented to the affair, others disagreed. Cornelius Stevenson, Elizabeth’s stepfather, believed Elizabeth was guilty and that the scenario of Elizabeth seducing Cadell was more believable than Cadell seducing Elizabeth. Cornelius presented an alternate view, which is more reminiscent of Henry Fielding’s *Shamela* (1741), in which Pamela is the

38 Richardson, *Clarissa*, 893, 929, 1128
seductress instead of the victim. Stevenson gave a deposition to the Court, which was used to prove Elizabeth and Isaac’s marriage. Although the Court appears to have disregarded the rest of his statement when it made the final decision, Stevenson’s testimony sheds light on his views and assumptions. He saw Cadell as a shy, quiet person, who behaved appropriately in front of his superiors. Considering “the Situation that he Stood in as an apprentice to his…Brother Robert Stevenson… [Cornelius] did not think it probably that he would have attempted to Violate the Chastity of the said Elizabeth Gouverneur…” Since Cadell’s future success was dependent on his reputation, it would have been unwise for him to risk his livelihood by plotting to seduce and ruin Elizabeth. Cornelius concluded that Cadell could not have seduced or raped Elizabeth because it would not have been a logical action for someone like him. He assumed that youth hindered forwardness. Cadell’s age, along with his economic and social position in society, and his naturally shy disposition made it unlikely that Cadell was the assertive partner, according to Stevenson.

The Court believed that passion explained Elizabeth’s affair, but that did not mean that the Court condemned all passion. Knott points out that passion did not translate into sensibility. It was passion guided by reason, instead of one without the other. Elizabeth had failed to use reason to direct her passion, and she knew that a reasonable assessment of her situation would have meant that the affair would never have occurred. The Court did not expound at length about this consequence, nor did it lecture Elizabeth about her behavior. Its view of Elizabeth shows that it believed women, as well as men,

42 Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
43 Knott, Sensibility and the American Revolution, 5.
could feel sexual passion, even though sexual passion was not supposed to interfere with a man’s role as the financial provider of his family. In order to avoid the consequences of passionate excess, people were to temper their passions. Even if an individual did not act on his or her feelings in order to produce benefits for the individual and society, that individual could not always avoid, crush, or dismiss such thoughts or feelings.

Elizabeth’s views suggest how she understood her life, her marriage, and her world. Elizabeth’s imagination and the reality of her situation combined to influence her version of events. While in Philadelphia, her happiness probably came from her talking to Cadell and reading the novels he procured for her. As nothing else was competing for her attention, she could spend her time fantasizing about a better life, one where she had not been forced out of her house with nothing during wartime, one where she had not been dismissed from Isaac in New York, and one where she felt loved. The problem in this case was that Elizabeth had acted on her feelings. Notwithstanding Cornelius’ claim that Elizabeth had played the role of seductress, the Court believed that Elizabeth and Cadell were mutually attracted to each other and that their affair had been natural, if socially unacceptable.
Chapter 3

Hamilton’s ‘objects of distress:’
Sensibility and Justifications for Divorce in Late Eighteenth-Century America

Sincerity depended on the sincerity of others so as not to be ridiculed, misled, fooled, or ruined. According to Sarah Knott, the “desire for personal authenticity and sincerity” meant that a sensible person wished, ideally, to be with others who were “like-minded,” especially because “sincerity could lead a person to look ‘foolish.’” Sensible people believed sensibility, as in the case of the other qualities they prized, was natural, but in order to refine it, education and practice were necessary. Knott’s sentimental coteries, the small groups of literary Philadelphians she examined, formed around a shared sense of sympathy and understanding. The same ideals influenced their ideal of marriage, although it was complicated by the actual experience of being married. Some sought comfort or guidance from literature or religion when the ideal was either not enough or had failed to be achieved. Others came to believe that divorce, rather than literary retreat, fictional death, or actual death, was the only remedy for marital failure. But, even here, the common theme of sympathy for the plight of others and a desire for human improvement affected the process. In fact, the pervasive influence of the culture of sensibility sheds light on New York’s legal culture and the creation of New York’s first divorce law.

Complainants, defendants, and witnesses in early Chancery divorce cases illuminate New Yorkers’ expectations of appropriate behavior. Since people could only

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1 Sarah Knott, Sensibility and the American Revolution (Chapel Hill: Published for the Omohundro Institute of Early American History by the University of North Carolina Press, 2009), 111-112.
divorce on the ground of adultery, the value of chastity necessarily played a main role in
the court cases. The surviving cases that made it to the Court show that New Yorkers
expected spouses to be faithful. The records reveal other values, including financial
responsibility, sobriety, and affection, that were considered significant for creating happy
marriages. To the extent that such values can be associated with class it can be suggested
that class influenced the divorcees’ general views of marital expectations, but the
informally dissolved marriages of some of the more impoverished probably never
appeared before the Court of Chancery.

Charles Bingham, who was living in Great Britain in 1791 when his divorce case
was heard in New York’s Chancery Court, had been unfaithful to his wife Ann. Mary
Clifford testified that Charles had visited her house before the British evacuation. She
claimed that Catherine Matilda Coffman had come to live with her after Catherine’s lover
had died. Mary stated that Catherine and Charles had “an unlawful connection,” and
Mary also admitted that Charles “had carnal knowledge of her,” that is Mary herself,
during a seven year period. The Court records claim that Mary and Catherine were not
the only women with whom Charles committed adultery while married to Ann. In 1793
Christina Williamson sought a divorce from her husband, Timothy, a butcher. Thomas
Bradford, Timothy’s partner in the butchering business, described Christina as “always
chaste good virtuous.” Betsey Lane, who had been locked in Timothy’s house with him
when his wife was not home, also stated that Christina was a “chaste good” woman. In
contrast to Christina Williamson’s chaste and virtuous character, one witness described
Christina Thompson, who gave Timothy a venereal disease, as a “whore.” In an 1810
case, Mary Cornell expressed her desire that her husband, Stephen, “would have
continued to conduct himself chastely…” as a husband ought to have acted. She assured the Court that she “hath always conducted herself as a good and faithful wife.” She felt the need to note that she was virtuous. Her own innocence showed that she had given no cause for him to not fulfill his part of the marriage contract. Witnesses often assessed the virtue of the complainant to show that she or he did not warrant an unfaithful spouse.  

Barnabas Allen, of Albany, NY, accused his wife, Faitha, of committing adultery with Thomas Hall. Samuel Perry, a merchant, served as a witness in the Allens’ divorce case. In his 1809 deposition he described his encounter with Faitha and Hall one night. Perry had returned home late one night after a “performance at the house of Ephraim Noble” and found a horse tied up. He woke his clerk John to ask about the horse, but John did not know whose it was. While he was examining it, Perry “happened to cast his eyes toward the fences,” where he saw footprints. Perry followed the tracks, which led to the Allens’ house. Perry was somewhat confused because he knew Barnabas had been away for a while. Curious, Perry went near the window of his house and heard whispering. He knocked, and Faitha asked who it was and what he wanted. Perry replied that she should prepare supper, since Barnabas was home because he saw the horse tied up. She answered that he had not returned. Afterwards, Perry went towards the window and heard her say, “Hall, you had better be going for you will be found out.” When Perry saw Hall leave, he stopped Hall and explained that “its not wright for you to be about such business this time of Knight, you have a Wife of your own and a reputable man’s daughter.” Hall denied that he was alone with Faitha, yet he begged Perry not to speak of

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it. Obviously, Hall’s pleading did him little good because it was Perry’s testimony that brought the affair to light.

A popular, informal mode of divorce was the newspaper advertisement, which also reveals society’s expectations of the duties of man and wife. At the same time that the Gouverneur case was making its way through the newly set up legal divorce process, John Guest published an advertisement in the New-York Morning Post. John informally divorced his wife, Eunis, in the March 6, 1788 paper: “Wherefore I declare before God and the world, that I do reject and disavow her as a wife for ever, and desire all persons to take notice, and not to pay her on my account, as I am determined not to pay any debts of her on my account.”

Although John’s disavowal of his wife and her debts was not legal and would not have held up in court, the full advertisement lays out what John believed were the duties of husband and wife. He assumed that New York society at large held the same beliefs regarding expectations for marriage.

John accused his wife of coarse behavior, being unfaithful, and abandonment. “Eunis, my wife, has for a long time behaved in a vile and prostitute manner, and in violation to all the sacred vows of the marriage state, has been guilty of adultery with several persons…” John also felt the need to assure the court of popular opinion that she acted this way “…without any cause or reason whatsoever, rejecting her lawful husband, now cohabits [sic] with a certain Joseph Bagley…”

John was following a popular, as opposed to a legal, practice. John appealed to other New Yorkers to not give Eunis credit on his account. He

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3 Barnabas Allen v. Faitha Allen, 1809, Miscellaneous, J0087-82 Box 3 A34.
4 New-York Morning Post. March 6, 1788.
5 New-York Morning Post. March 6, 1788.
assured the reader that he was innocent, so Eunis was solely responsible for the breach in the contract.

While John seemed to imply that he was an affectionate, calm, reasonable, just person, he stated explicitly that his duty as a husband was to provide for his wife and his children financially. His disavowal of his wife’s debts showed that he acknowledged his responsibility as his wife’s financial provider. In the ad John explained that he would be grateful to anyone who gave his children assistance, “till God shall please to enable me [John Guest] to provide for them…” He added, “I humbly entreat the good people of the state of New-York, not to have any reflections on my children, on their mother’s account…” Notwithstanding John’s attempt to discard his responsibilities to his wife because of her breach of the marital contract, he maintained that he still had responsibilities as a father of the children they had created together.

Other evidence illustrates that concern over children affected views of divorce. In 1785 Benjamin Trumbull made a plea against divorce in a New Haven, Connecticut church, which was later printed as An Appeal to the Public with respect to the unlawfulness of divorces. He insisted that the bible “does not sanction divorce…after the husband and wife had reaped the fruits of nuptial enjoyments in a tender offspring.” If a marriage was “null and void,” then Trumbull believed the children of that marriage became bastards. Trumbull’s view here, and his denunciation of divorce, was rare for late eighteenth-century America, but it illustrates the more general confusion over a child’s legitimacy. The case of Anne Livingston, also referred to as Nancy Shippen, who

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6 *New-York Morning Post*. March 6, 1788.
separated from her unfaithful husband in 1783 after a couple years of marriage, and worried over the fate of her daughter, demonstrates uncertainty over custodial rights.\(^7\)

Anne did not want her estranged husband, Henry Beekman Livingston, to gain custody of their daughter Peggy. Anne shared custody of Peggy with Henry’s mother, Margaret Livingston, who thought that Anne had a right to keep her daughter. In a 1792 letter to Anne, Margaret advised her to consult her lawyer about her rights as a divorced woman. The couple divorced at some point between 1790 and 1792. Anne, with Aaron Burr as her lawyer, sued Henry for a divorce in New York State in 1790. Henry responded with a demurrer, claiming that she was no longer a resident of New York since she had been living with her parents in Pennsylvania, and so the case should be thrown out because the Court did not have jurisdiction. The Court overruled Henry’s demurrer, but the ruling in this case is unknown because the Court’s decree has not survived. Historians claim that Anne’s failure to divorce Henry was because of her fear of losing custody of her child or the result of New York’s lack of a judicial divorce law. Knott repeats Kerber’s false claim that “divorce in New York [in 1789] depended on a private bill being shepherded through the legislature by a skilled politician.” Ethel Armes, the editor of Anne’s journal book, argues that Henry included a “veiled threat” that she would lose custody of her daughter if she divorced him, which “must have struck cold terror to Nancy’s [Anne’s] soul.” Knott and Kerber support Armes’ view that Anne did not divorce or formally separate from Henry because she feared “her husband would have full custody of their daughter and might take the child from her sight forever.” Norton explains that Anne “had no legal standing to challenge her husband,” and so could obtain

\(^7\) Benjamin Trumbull, *An Appeal to the Public with respect to the unlawfulness of divorces ... pleaded before the Consociation of the county of New-Haven*, December 9th, 1785, Digital Evans Edition (New-Haven: Printed by J. Meigs., 1788), 1-5.
no protection from his threat. New York’s 1787 divorce law that granted divorces in cases of adultery, Henry’s infidelity, and the records of Anne’s divorce suit against Henry discount such claims.

Although most scholars base their reading of Anne’s situation on the assumption that women lacked custodial rights, Anne’s mother-in-law believed that Anne might have the legal right to her daughter. Margaret thought that Anne was a “feme Sole” after her divorce, and so she wondered if Anne was “not as much intitled [sic] to be her [Peggy’s] guardian…” New York’s Chancery Court, during the late eighteenth century, made a point of stressing the legitimacy of the children of divorced parents. Still, Jefferson, like John Adams, Benjamin Rush, and Alexander Hamilton favored limited divorce, yet was concerned over the effect this would have on the legitimacy of children.  

The Court records also suggest that a double standard regarding adultery existed in early republican culture, reflecting the dominant position of the male head of household. Thomas A. Foster, in his study of masculinity in eighteenth-century Massachusetts, explains that “When wives engaged in extramarital relations, their betrayal challenged a man’s position as head of household and showed him humiliated by her disrespect.” It “signaled the failure of the husband to create and maintain an orderly, stable, and monogamous household.” A wife’s affair humiliated the husband since it showed that he had lost control over her. Although New York, in 1787, created an apparently egalitarian divorce law, the testimonies of the complainants, defendants, and

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witnesses demonstrate the gender inequalities imbedded in early American society. The testimonies in cases where women brought suit focus on other problems in addition to proving adultery. A husband’s abandonment of his wife or violence toward her was usually cited in addition to the charge of adultery. In May 1794 Elizabeth Cullen believed her husband, Thomas, had abandoned her and was living in the West Indies or Philadelphia. In 1798 Rachel Hamilton sought a divorce from her husband Arthur, who had moved to Savannah, Georgia. By contrast, the testimonies in cases where men brought suit emphasize the charge of adultery. The difference in focus suggests that social convention did not accept adultery alone as sufficient cause for a wife to end a marriage, as it did in the case of a husband. A husband’s infidelity was not viewed, by those who sought divorces, as a sufficient ground for divorce. The Chancery Court records up to 1800 suggest that what Foster found in Massachusetts was also true in New York.  

Observations on and Arguments for Divorce

Although the testimonies of complainants, defendants, and witnesses illustrate the existence of a sexual double standard, the divorce law that New York created was egalitarian. The law was in accordance with arguments in favor of divorce. Thomas Jefferson, Thomas Paine, and an anonymous author of a 1788 divorce pamphlet made statements supporting egalitarian divorce. They believed that the end to marriage was happiness, for the individual and for society. Most of the states, except South Carolina, established divorce laws shortly after the American Revolution, if they had not done so

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already. Trumbull began his “APPEAL to the Public…” by stating that most people did not consider the problem with divorce because “it has been a tradition.” His 1788 sermon was given in New Haven, Connecticut, where divorce had been allowed since the early seventeenth century. His view differs from those in New York because divorce had been outlawed by the English, who gained the colony from the Dutch in 1664. (The Dutch had allowed divorces for adultery or desertion, but while the Dutch position on divorce had lingered on until 1676, only a handful of divorces had been granted during the colonial period.)\(^{11}\) By confining the grounds of divorce to adultery, which was included as a cause in every divorce law, New York’s law highlights the most widely accepted cause of divorce.

John Adams discussed his views on divorce in a 1759 diary entry. He believed that “Adultery or Impotence are sufficient Reasons of Divorce,” because such “hindrances to the married state could not have been known beforehand.” He did question the legitimacy of divorce based on “Dissonance of Disposition” because a person could discover his or her future spouse’s temperament before marriage. Adams’ example is from the male point of view; “By Conversation with a Lady, and Tryals of her Temper, and by Inquiry of her Acquaintance, a Man may know, whether her Temper will suit him or not. But he can never know whether she will be fruitful or barren, continent or incontinent.” He denounced “an unlimited Toleration of Divorces” on the grounds that it would “produce confusion, and Misery” His main concern was the practical consideration

of what to do with the children. The spouse who did not gain custody “would be deprived of the Pleasure of educating, and seeing…” them, but he claimed that division of custody could not produce a reasonable and happy solution.\footnote{John Adams, Diary 3, 1759 [electronic edition]. \textit{Adams Family Papers: An Electronic Archive}. Massachusetts Historical Society. http://www.masshist.org/digitaladams/ page 38-39}

Thomas Jefferson wrote his notes on divorce, probably in November or December 1772, in preparation for a bill of divorce he was supposed to present to the Virginia legislature. He listed the arguments for and against divorce. His arguments for divorce focused on producing happiness, which along with “Propagation” was the “End of marriage…” He wrote that it would be “Cruel to continue by violence a union first by mutual love, but now dissolved by hatred.” Jefferson also explained that divorce provided a measure of equality because it gave the wife more mobility and choice; “Cruel to confine Divorce or Repudiation to husband who has so many ways of rendering his domestic affairs agreeable, by Command or desertion, whereas wife confined & subject.” Here, Jefferson, as Frank L. Dewey suggests, was probably influenced by the French philosopher Montesquieu. On the negative side, he feared the consequences of divorce for the children involved, and he also noted the possibility that the example of divorce would increase domestic “quarrels,” or decrease the number of marriages, as he pointed out happened in Ancient Rome when easy divorce had been allowed. He examined religious scripture in preparation for the case, and jotted down that “Moses allowed [divorce] for hardness of hearts.” He also pointed out that it was the Popes who had established marriage as a sacrament and then refused to allow divorce.\footnote{Frank L. Dewey, “Thomas Jefferson’s Notes on Divorce,” \textit{The William and Mary Quarterly}, vol. 39:1, Jan 1982. 216-220.}
Two years after Jefferson prepared his notes on divorce, and two years before *Common Sense* (1776), Thomas Paine published his “Reflections on Unhappy Marriages.” Paine asserts that the ‘weal or woe of life depends on no one circumstance so critical as matrimony.” Notwithstanding “this universal acknowledgement,” people continued to marry without sufficient “caution.” Paine divides those made unhappy by marriage into two main groups: “the young, the rash and amorous, whose hearts are ever glowing with desire…” and their opposites, the “young without passions, and in health without appetite” who “hunt out a wife as they go to Smithfield for a horse.” In the former case, the “future days are sacrificed” because the couple followed their sexual desire, which “soon flies away, and happiness finds no entrance when love is gone…” In the latter, they “inter-marry fortunes, not minds, or even bodies” and will “live decently.” Paine does not believe this “insipidity” constitutes happiness because they never “experience…a series of actual sensible enjoyments,” and so “dream they live.” He did note that there are other cases, like a young beauty marrying an old or ugly person in exchange for wealth; he considered this to be prostitution. Sexual satisfaction would be impossible because the “shocking incumbrance would render the sumptuous banquet tasteless, and the magnificent bed loathsome; rest would disdain the one, and appetite sicken at the other.” Paine can foresee the unhappy consequences of such unions, but he points out that the unhappiness of couples “whose fortunes are affluent, whose desires were mutual, who equally languished for the happy moment before it came, and seemed for a while to be equally transported when it had taken place” should convince people that marriage needs to be reformed. As their “extasy [sic] abates, coolness succeeds…,” the result is “perfect insensibility,” leading to “mutual infidelity.” One could infer that

Paine suggested that Anglo-American society should follow the example of the “American savage,” who maintained “no other ceremony than mutual affection, and last no longer than they bestow mutual pleasures.” Paine claimed that a Native American told him that Native Americans “make it our business to oblige the heart we are afraid to lose; and being at liberty to separate, seldom or never feel the inclination.”\footnote{Paine, “Reflection on Unhappy Marriages,” 51-54.} Paine viewed marriage without the possibility of divorce as a prison; those who felt trapped “by way of revenge, double each other’s misery.” The influence of the culture of sensibility on Paine’s view of marriage is apparent. Paine’s \textit{Common Sense}, published in 1776, applied his belief that relationships should be based on affection and not force to the affairs of state. Political bonds, like marriage ties, should be voluntary and produce happiness.

In 1788 the suicide of an unhappily married woman prompted the publication of an essay in favor of divorce. An advertisement in the \textit{Pennsylvania Gazette}, published June 25, 1788, noted that Zachariah Poulson, Junior, was selling “An Essay on Marriage; OR, the Lawfulness of Divorce, In Certain cases, considered. Addressed to the Feelings of Mankind.” The Gazette explained that the anonymous author had been inspired by a newspaper story where a woman attempted to “destroy herself on account of some infelicity in Marriage…” and wrote the essay “in order to prevent the disagreeable consequences that often result from them.”\footnote{“An Essay on Marriage; OR, the lawfulness of Divorce, In Certain cases, considered. Addressed to the Feelings of Mankind. Just Published, and to be Sold, by Zachariah Poulson, Junior,” \textit{The Pennsylvania Gazette}, 25 June 1788. Evans Early American Imprints, first series, 21076. Digital Edition, American Antiquarian Society.} By 1788 Americans were in the process of
creating laws for their new society. Adams had commented on divorce for his diary entry during his college years, before he was a politician in an independent United States; the comments were not intended to persuade people or alter policy. Jefferson compiled notes from scripture, history, and philosophy in order to prepare a legal brief to present to the Virginia legislature, still under the British crown. Paine was also writing prior to American independence, but he extended his arguments for relationships based on mutual affection two years later when he provided Americans with reasons to cut ties with Britain in *Common Sense* (1776). At the time the 1788 essay appeared, Americans had broken from Britain, had produced a federal Constitution, and were still in the process of making laws in hope of improving society; America was to be more virtuous than the old world.

The 1788 essay was a more extreme argument than those written at the time. The author hoped his argument would appeal to the “feelings of mankind,” connoting sensibility, and he urged sympathy for those who are miserable in marriage. Poulson, the publisher, wrote that the author “thought that there may be others ‘who were completely wretched,’ but who ‘did not plunge themselves into another world to avoid the miseries of this…’” The author explained that his interest in this subject resulted from “strong sympathetic feeling for the weakness and distresses of human nature…” and, referring to the successful revolution, believed that America, “famous for her love of liberty, and hatred of tyranny…” could provide some relief to those “experiencing marital misery.” Like Jefferson and Paine, he believed that marriage was meant to produce happiness, but he went deeper in describing instances where marriage failed to produce this intended end. Different backgrounds, including city versus country living, social rank, and religion
could produce conflicts, which over time, would exacerbate tension and stress between the spouses; “…passions are excited in each, which were before unknown to either,” and the “Consequence” would be that the couple “mutually torment, thwart, plague, revile, and hate one another.” He also thought a similar result would occur if a couple was united by “mutual affection,” but had not “waited until a settlement, or means of living…” had been secured. In this case, the stresses caused by society’s disrespect of them for their “disobedience” would cause them to “reflect on each other as the cause of their misfortunes.” Or, marriages based on coercion would lead spouses to “seek enjoyment elsewhere,” which “cannot be indulged and surely we need not mention the many wandering imaginations and desires…” The author argued that the “teachers in religion, moralists, and mankind in general” are wrong that reason dominates affections, and insisted that affection is too powerful. Evidence of this fact was everywhere, he claimed, as examples of “pity, compassion, or disinterested regard” show. It is affection that makes humans different from “beasts.” He insisted that by allowing divorce people would be happier, suicide would disappear, people would be nicer, and “deception in courtship” would end. His view, as he points out, does not favor one sex over the other.17

James Wilson, who gave lectures on the law in 1790-1792, stated that government could interfere with domestic relationships when the “peace or safety of society” is endangered; otherwise, the state has no right to interfere in them. If the good of society was not threatened, then the male head-of-household maintained rule over his family. Although Wilson believed the union between husband and wife formed the basis of society, he declared that the union could be broken; divorces were acceptable in order to avoid “…any more blackened pages be[ing] added…” to a marriage, in which “the

17 “An Essay on marriage; or, The lawfulness of divorce…”
impression of happiness must be obliterated…” Although Wilson refrained from using the term adultery here, he alluded to it when he discussed the “purity and harmony of the matrimonial union,” and that “perfidy against the solemn engagements of marriage obliterates the impression of happiness from every subsequent part of the conjugal history.” Wilson noted his disapproval of dissolving marriages for minor disputes or at the will of either party without reasonable cause. He believed that Ancient Rome’s liberal stance on divorce had destroyed its society because when “divorces can be summoned to the aid of levity, of vanity, or of avarice, a state of marriage becomes frequently a state of war or stratagem.” The “most tender of human connections was degraded to a transient society of profit or pleasure.”

Society’s happiness depended on stable marital unions. Limited divorce could contribute to this, but no-fault divorce would destroy it, as Jefferson and Adams would have agreed. Wilson, Adams, and Jefferson, all trained as lawyers, desired happy unions and accepted divorce in certain cases. They held more moderate views of divorce than were conveyed in the published tracts of Thomas Paine and the anonymous 1788 author, which stressed individual happiness through discussions of incompatibility and the unrelenting binding force of marriage. For Wilson, Adams, and Jefferson the happiness of the individual was dependent on the happiness of society – republican virtue.

Benjamin Rush’s views of marriage exemplify the argument that the rhetoric changed, but “women’s reality” had not. Knott pointed out that Rush believed the subordination of wives within marriage was essential to happy marriages. Rebecca Smith,

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before her marriage to a Mr. Blodget in 1792, asked Rush for marital advice. Rush began by explaining how, upon marriage, Rebecca’s status would change. Rush warned her that “The world will bear a hundred follies in a girl which they will not pardon in a married woman.” The reason for the different expectations of a single and a married woman was that “The defenseless state of virgin life often disarms scandal and resentment, and youth and beauty in a young woman are the common charge of a whole community, but this tenderness will cease as soon as you acquire the protection of a husband.”¹⁹ Society was supposed to take care of young single women. Once a woman married, her husband was to take over as her protector.

In his letter to Rebecca, Rush insisted that a woman should earn her husband’s “esteem and respect” through her virtue. And if a woman wanted a happy marriage she should gain her husband’s “esteem and respect.” “Men often insult the women they love when they are angry, but never the women whom they respect and esteem. Love is kind by fits and starts, but esteem and respect are durable and steady in producing kindness and gentleness to a wife.” A woman was to defer to her husband’s will. “Don’t be offended when I add that from the day you marry you must have no will of your own.” One can note that this is precisely what Richardson had preached in Pamela, half a century earlier. A wife must agree with her husband even “if he is like others of his sex,” and would “require unreasonable sacrifices of your will to his.” If a husband had “good sense and prudence” it would make her deference agreeable, but if he was not ideal, then she “would by submission insensibly acquire an ascendancy over him in the management of his person, his family, and his affairs, and direct them all without his being conscious

Here Rush’s conception of a woman’s role in marriage lends support to Lewis’ point that a wife had the power to alter her husband’s behavior.

Rush believed that a man’s sensibility would be refined in marriage. Women had more sensibility than men because they had “‘quicker perceptions.’” Knott points out that Rush had claimed in 1786 that women were more virtuous because of the “connection between greater sympathy and good morals.” In response to Mary Wollstonecraft’s “Vindication of Women’s Rights” (1792) Rush wrote that “there is an original difference in the bodies and minds of men and women,” which was the result of nature and not of education, as Wollstonecraft had argued. Here, then, Rush contributed to the “backlash” against Wollstonecraft described by Rosemarie Zagarri. The “practice of reason” would weaken women’s natural sensibility, and therefore it would undermine morality in society. If women had the power to refine men to be more moral because of their natural sensibility, then women needed to display their virtue. If women were not more moral than men, they could not reform men, and so could not reform society. Implicitly Rush supported the double standard. Consequently, Rush explained that women were not to even hint at “infidelity and immorality, even that degree of the latter which consists in profane exclamations only” because it diminished men’s appeal for them. Coarse women seemed manly. For Rush, Christianity was the “surest safeguard to female honor,” and so he admonished young Rebecca to be pious. He even claimed that this was why even “professed Deists” preferred to marry pious women. Rush held that men married to avoid the sin of having intercourse outside of marriage and that women gained respect,

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20 Rush, Letters, 617-618.
and therefore happiness, by confining their sexual being to the privacy of their marital partnership.

Theodosia, Aaron Burr’s wife, is an example of a strong, intelligent woman, who cannot be characterized as representing American republican, sentimental subordination. Burr met Theodosia when he was about twenty-one, and she would have been about thirty-one and still married. She had received a cosmopolitan education, superior to most Americans, and was fluent in French and in the culture of the French salons. The older, sophisticated Theodosia had an egalitarian marriage with Burr. They discussed intellectual topics, including the writings of Rousseau and Wollstonecraft. Nancy Isenberg viewed their relationship as being fashioned “on the eighteenth century’s ideal of an intellectual friendship. The heart and mind were meant to bind two kindred souls together into a noble communion based on mutual esteem and generosity. Sublime friendship required what Burr called the “impulse of feeling—to speak without formality or artificial restraint.” The egalitarian nature of the relationship, which Theodosia’s age and experience and Burr’s acceptance of Wollstonecraft’s ideas probably help to explain, does not fit with the republican marriage articulated by Rush, and discussed by Lewis. Indeed, as their admiration for Wollstonecraft suggests, they were more radical in their understanding of companionate marriage than most people of their day. Other American women also agreed with Wollstonecraft’s views.22

Rush relied on scripture to form his views on divorce, as well as marriage. He believed that marriage was more natural and proper than celibacy and used his interpretation of a biblical verse to show God’s favor of the married state, as opposed to

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the Catholic Church’s esteem for the celibate life. Rush interpreted Matthew 19:12 as being against celibacy, even though “it has been supposed to recommend celibacy.” The “pleasures” of marriage, he argued, were “free from sin” since marriage existed before the fall of Adam and Eve. Marriage had existed in Paradise, and, according to Rush, since it remained “essential to the order and happiness of society – it must therefore be agreeable to the will of God.” He also pointed to the chapter where the “Savior condemns the law of Moses for permitting easy divorces.” Rush stated, “Let no man, let no rash vow, and let no mistaken interpretation of Scripture therefore ever separate them [a married couple] from each other.” Divorce was allowed in cases of adultery because it introduced sin and “a breach in the order of society” into the marriage. When Jesus denounced divorce for other reasons, the “disciples, shocked at the purity and strictness of this doctrine respecting divorces, say to him, if such difficult rules must obtain in matrimony and if so little latitude is to be given to escape from bad tempers or the many hundred sources of misery which occur in that state, then ‘it is not good to marry.’” Rush continued, “And, he [the Savior] knew the human heart so perfectly as to know that no single man ever lived or could live without transgressing that divine law agreeably to its pure and spiritual interpretation.”23 Since marriage was preferred by God, marriages should not be dissolved, except in cases of adultery where the marriage had already been destroyed by sin.

Rush was not rigid in his opposition to separating married couples. When an individual case of a marriage separation presented itself, he seemed sympathetic to the woman involved and denied that she had committed any wrongdoing. Rebecca Blodget,

who had asked Rush for marital advice when she was still Rebecca Smith, separated from her husband. Rush recalled their meeting in 1811, almost two decades after he wrote his marital advice letter to her. She was rumored to have had improper “conduct…towards our sex [men]…,” but Rush said that “there were no proofs of this being the case.” Her behavior when they met in 1811 suggested otherwise. “She wept when we met. She always professed a great attachment to me….” She “was exactly in person, manner, and conversation what she was when 18 years old---beautiful, sprightly, eloquent, sensible…”

Rush was still charmed by the older Rebecca. He offered no harsh words about how her marriage turned out, and in his commonplace book he recorded no misgivings about her behavior. She remained an “amiable” woman. Perhaps he believed her reason for separating from her husband was justified; she had separated from Mr. Blodget because “he beat her 10 days after their marriage, and often afterwards…” Rush did not wonder if she had done something to provoke the beatings. To him, she was too delightful to be the guilty party. What is even more telling about Rush’s view of Rebecca’s marital dissolution was that he commented on it during the revolutionary “backlash” (discussed further in chapter 4) during which views on women’s and men’s roles in marriage became more reactionary. On a personal level, Rush could adjust his prescriptive beliefs when his feelings suggested he do so – sensibility, that is to say, his sympathy for another, triumphed over his assertions that divorce should only be allowed in cases of adultery.

Arguments in favor of divorce during the last half of the eighteenth century demonstrate some common themes. The purpose of marriage was to create happiness for the couple within marriage, but it was also for the grander purpose of creating a stable society. The ability to divorce could restore happiness and stability, but it had to be limited in order to ensure that its purpose was to restore virtuous society, and not to destroy it. Justifications were based in scripture, sensibility, or both.

**Hamilton, Sympathy, and the Creation of New York’s Divorce Law**

Hamilton was charged with leading the committee to decide on Isaac Gouverneur’s 1786 petition to the state legislature for divorce; the committee returned with a bill to legalize judicial divorce. Some members of the Council of Revision objected to the bill because they disagreed with a clause forbidding the guilty party to remarry. Hamilton countered with his belief “that it would be extremely hard by reason of one small defect in the law, relief should be denied to many who are real objects of distress.” Hamilton evoked the virtue in distress theme to persuade his fellow legislators to pass the divorce bill. Hamilton’s appeal to the feelings of his peers worked, or at least may have contributed to the outcome, and on March 30, 1787, the Assembly passed “An Act directing a mode of Trial, and allowing for Divorces in cases of Adultery…” making judicial divorce legal in New York.\(^\text{26}\) It should be pointed out that Hamilton was trying to persuade men who wanted a more liberal divorce law, not men who were against divorce. Hamilton’s appeal to sympathy suggests that the creation of early New York’s divorce law was influenced by the culture of sensibility, which also informed the Court’s rulings until 1814, when James Kent became chancellor. Hamilton’s sincerity when employing

the language of sensibility can be questioned, but a discussion of Hamilton’s ambitions, his view of public and private virtue, and his view on the French Revolution clarify his views on relationships and legal divorce.

Hamilton believed that improving his social position would make his life more enjoyable. His ambition was his “ruling passion,” an eighteenth-century phrase, popularized by Pope. Hamilton was free to indulge in his feelings when they did not conflict with his ambition to climb the social latter. Hamilton’s quest for powerful connections does not mean that he lacked the ability to have feelings of love, or sympathy for others. Since his childhood in the West Indies, Hamilton had wanted to elevate his position in society. To do so, he tried to refrain from indulging in passions that were at odds with his social ascent. After his father abandoned his family and a year after his mother’s death, Hamilton secured a job as a clerk for a St. Croix merchant. In a letter to his childhood friend, Edward Stevens, Hamilton wrote that he resented the “grov’ling and condition of a Clerk or the like, to which my Fortune &c. condemns me and would willing risk my life tho’ not my Character to exalt my Station…” Hamilton confessed that his feelings were the result of his “Ambition,” his “weakness…” In 1769, Hamilton expressed his desire for a war so that he could rise above his station. When the American Revolution began in 1776, Hamilton saw his chance. Having already immigrated to New York, Hamilton joined the war effort and became George Washington’s aide-de-camp and close personal friend.

Hamilton’s search for a wife further demonstrates his desire to improve his position in society. In an effort to find a wife who belonged to a wealthy family, he

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sought the help of John Laurens, whose friendship he gained while both were serving
Washington. In stating his qualifications for a suitable bride, Hamilton wrote in 1779:

She must be young, handsome (I lay most stress on a good shape)
sensible (a little learning will do), well bred…In politics, I am
indifferent what side she may be of; I think I have arguments that will
easily convert her to mine. As to religion a moderate stock will satisfy
me. She must believe in god and hate a saint. But as to fortune, the
larger stock of that the better.28

Hamilton married Elizabeth Schuyler, a member of a prominent New York family, a year
later. Moreau de St. Méry, a Frenchman residing in America for part of the 1790s,
described Hamilton as “Consumed by ambition,” and that he “wished everyone to think
that he alone lay the salvation of America…” Hamilton was “one of the zealots for the
common good…” and his marriage to Elizabeth Schuyler gained him connections that
helped him achieve his goals.29

In his personal relationship with his wife Hamilton declared his faithfulness and
claimed no one could compete with him on this note. Hamilton spoke in a sentimental
manner to his wife Elizabeth. For example, in a 1782 letter he wrote, “I thank you my
beloved for your precious letter by the post. It is full of that tender love which I hope
characterise [sic] us both to our latest hour. For my own part I may say, there never was a
husband who could vie with yours in fidelity and affection.” Of course, Hamilton’s affair
with Maria Reynolds would cast doubt on the sincerity of his claim to fidelity, but at the
time that Hamilton wrote his letter to Elizabeth, his affair with Reynolds had yet to occur.

In 1797 Hamilton publicly admitted to his 1792 affair with Maria Reynolds. His
confession was an attempt to discredit accusations that he was involved in “public
(financial) misconduct.” Historians and biographers have disagreed on whether Hamilton

28 Hamilton, Papers, 2:34-38.
29 Médéric Louis Elie Moreau de St. Méry, Moreau de St. Méry's American journey, trans. Kenneth Roberts
and Anna M. Roberts (Garden City, N.Y.: Doubleday & Company, Inc., 1947, 136-137.)
was a victim, as Hamilton himself claimed he was. Broadus Mitchell describes Hamilton’s affair with Maria as his “plight” and explains that it was not something of which Hamilton complained. Forrest McDonald attempts to exonerate Hamilton; he would not have blamed Hamilton if he committed adultery on the account of lust because “sexual ardor is a powerful force…” However, according to McDonald, that is not why Hamilton did it. Instead, he insists that Hamilton’s adultery was the result of Hamilton being a romantic, and that the romantic feeling “grows stronger in proportion as it is resisted or suppressed – and the more moral its victim, the more virulent the malady becomes.” Mitchell and McDonald fail to place Hamilton within the cultural context of his time, and they take his confession at face value. Hamilton claimed that it was his sympathy for the plight of Maria Reynolds that led him into a compromising situation, which Maria and her husband James had designed in order to extort money and possibly a position in the Treasury Department for James.  

According to Richard Brookhisier, Hamilton’s affair with Reynolds was wrong, but he mitigated his transgression on some level by coming forward and proving how important his public character was to him. This interpretation is also understandable because that was Hamilton’s intention. He was trying to clear his name of the public misdeeds. However, this interpretation also fails to consider the cultural context of the time and analyzes Hamilton’s explanation without considering the implications of Hamilton’s version of events. Isenberg, in *Fallen Founder*, argues that Hamilton claimed

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he was an innocent man seduced by a deceptive woman and her co-conspirator husband.

“Using the literary conventions of the day (while) reversing gender roles, Hamilton
likened himself to the English novelist Samuel Richardson’s pitied heroine, the poor,
innocent, seduced Clarissa…” He assured his society, as Isenberg suggests, “that he was
not the randy and rakish Lovelace.” Still, Isenberg does not delve into a discussion of
public versus private virtue. She maintains that Hamilton misjudged his society because
he believed that “his private indiscretion had no bearing on his public character.”

Hamilton sought to be publicly absolved, or at least gain public sympathy, for his
transgression. He did not argue that the private and public spheres were separate and
distinct in a man’s life, or that the public sphere was more important than the private.
Rush reiterated a saying by Franklin to show the public’s concern over private life;
“There are 3 subjects, Dr. Franklin said, which interest a man’s self only, and yet there
are not three subjects the world interests itself more in, viz. building a house, marrying a
wife, and making a will.” In the eighteenth century men thought of public and private life
as parts of a whole of a man’s life that intersected and influenced one another. Rush
claimed to prefer a private life and to “live only for the benefit of an amiable wife, a
promising boy, and my circle of patients” rather than be concerned with public
business.

Hamilton did employ the virtue-in-distress theme, as Isenberg points out, to gain
sympathy. The villain of sentimental novels achieved his aim – most heinously, sexual
conquest – through artifice. Elizabeth Cranch, Abigail Adams’ niece, made a point to

32 Alexander Hamilton to Elizabeth Hamilton, 18 December 1782, Hamilton, Papers, 226. Isenberg, Fallen
Founder, 167. For eighteenth-century Americans viewing private virtue as essential for public virtue, see
Quarterly 44, no. 4 (October 1987), 689-721.
applaud sincerity. In her journal, she related a meeting with a Mr. Quarle, who “was sincere, and not artifice.” Cranch ended her journal entry by expressing her “hope” that she was “not deceived.” Her fear of being fooled was probably a consequence of her familiarity with the virtue-in-distress theme in novels that displayed virtuous women who were deceived by charismatic men. The virtuous heroine of a virtue in distress narrative withstood repeated assaults on her virtue; in Hamilton’s story, he claimed to “have been so long and so peculiarly an object of persecution.” Hamilton admitted that the affair was wrong; “My real crime is an amorous connection with his wife,” but noted that “for a considerable time with his [James, Maria’s husband] privity and connivance, if not originally brought on by a combination between the husband and wife with the design to extort money from me.” According to Hamilton, Mrs. Reynolds had approached him, and, “With a seeming air of affliction,” told Hamilton “that her husband, who for a long time had treated her very cruelly, had lately left her, to live with another woman…” So, according to Hamilton, she represented herself as a figure of virtue in distress. His sympathy for Mrs. Reynolds led him to assist her. He would provide her with a small sum, but he could not do so at the time of her request, so he made arrangements to drop the money off at her lodgings. When he arrived, she led him to her bedroom; “Some conversation ensued from which it was quickly apparent that other than pecuniary consolation would be acceptable.” And so the affair began. After that point, he attempted to end it but hesitated because Mrs. Reynolds appeared to be violently attached to him. He also suggested that she was being “artful” through her pretended affections for him.

34 Elizabeth Cranch, *Journal of Elizabeth Cranch* (Essex Institute Historical Collections. v. 80, Jan. 1944. Reprint) American Antiquarian Society.
The villain, or villains, employed a variety of malicious or wicked schemes to fool a virtuous woman in order to have sex with her. In Hamilton’s version, the virtuous victim was Hamilton, a man, and so he reversed the gender roles in his story, as Isenberg explains. Hamilton, however, did attempt to maintain some of his manhood by assuring the reader that the Reynolds “did not make me entirely the dupe of the plot.” Hamilton was not the first to take the virtue-in-distress theme and confuse the gender roles. Henry Fielding satirized Richardson’s first virtue-in-distress novel, *Pamela*, with his novel, *Joseph Andrews*, which tells the story of a virtuous male servant, Pamela’s brother, who must maintain his virtue from the wealthy mistress who employed him. Men of feeling were frequent figures of virtue in distress, as MacKenzie’s 1771 novel *The Man of Feeling* illustrates, but rarely victimized sexually. Barker-Benfield points out that “alienated and violent frontiers men [in the 1760s]…put the language of sensibility to use, ironically presenting themselves as figures of virtue in distress…” The virtue in distress theme was also applied to politics. “Long having shared a ‘transatlantic culture of sensibility’ with the metropolitan British,’ Americans [during the imperial crisis with Britain] thought that they ‘would move those in power to compassion and change their policy.’”

Hamilton sought to accomplish the same within American national politics, after America broke from Britain. Isenberg’s comparison of Hamilton’s story to *Clarissa*, the heroine whose virtue led her to fall victim to Lovelace, is suggestive. Isenberg neglects male figures of virtue in distress, but this comparison demonstrates Hamilton’s belief that private virtue was significant to the public, and to public virtue. Hamilton had committed a sin; he had done wrong, but he did so because he was too virtuous; his

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sympathy had led him into a trap by the unsentimental Maria and James Reynolds, who
designed his ruin, according to Hamilton’s version of events.

Perhaps Hamilton was not being disingenuous when he wrote in the language of
sensibility to his wife. His ideal was to be an affectionate and honest husband. Even his
means of denying he was to blame in the Reynolds case suggests he wanted to believe
that he was not at fault, that he had been a faithful husband who was led astray by a
deceptive, plotting couple. Reality rarely lives up to ideals, but that does not mean ideals
should be discarded. Hamilton’s confession and subsequent justification shows that he
believed his society could sympathize with his situation. He wished to show that he was
virtuous in his private and public affairs, notwithstanding his adultery. Hamilton’s
background as a merchant’s clerk and later as a lawyer provided him with plenty of
training in appealing to the feelings of others to achieve an end. Hamilton hoped others
would show him pity, as he had attempted to do when he helped create New York’s 1787
divorce law by arguing that it would help “objects of distress.”

Lawyers in the eighteenth century appealed to the sentimental feelings of judge
and jury. John Adams, in 1774, stated that “The Excellency of a Tryal by Jury is that they
are the Partys Peers, his equals, men of like passions, feelings, Imaginations and
Understandings with him. If your Passions are not affected by this Occasion, you will not
be the Plaintiffs Peers.” Barker-Benfield explains that Adams made a “distinction
between private passion and, implicitly, public good, attributing mob action to the
former...however, the elevation of certain kinds of feeling could provide common

37Jean H. Hagstrum, *Sex and Sensibility: Ideal and Erotic Love from Milton to Mozart* (Chicago:
Representations of Failure and the Gendered Self in Eighteenth-Century Philadelphia,” The Journal of
ground,” as Adams thought it should in the courtroom.\textsuperscript{38} Hamilton appealed to feelings in his political tracts, and his argument for the divorce bill in the Assembly shows that he was well versed in using the language of sensibility to persuade. When Hamilton and Aaron Burr appeared as lawyers in New York’s Chancery Court, they did not have to appeal to a jury since the Chancellor of New York ruled in Chancery cases. Still they were part of a legal culture versed in sentimental language; for instance, the Court’s ruling in the Gouverneur case shows that it sympathized with Elizabeth. The Court did not banish Elizabeth, or leave her destitute. It blamed Elizabeth’s affair with Cadell as the “Consequence of Youthfulness and Passion.” It had tried to understand what had happened and concluded that the affair resulted from human weakness.

Hamilton viewed the French Revolution’s divorce law as immoral. The “new law of divorce [in France] was passed; which makes it as easy for a husband to get rid of his wife, and a wife of her husband, as to discard a worn out habit.” Divorce was the “dissolution of those ties, which are the chief links of domestic and ultimately of social attachment, the Journals of the Convention record with guilty applause accusations preferred by children against the lives of their parents.” He declared that the French Revolution’s assault on religion would be responsible for creating an immoral society. According to Hamilton, if morality was absent, then “the terror of despotism can alone curb the impetuous passions of man, and confine him within the bonds of social duty.”\textsuperscript{39} He obviously did not associate the French Revolution’s divorce law with the 1787 New York divorce law that he helped create. Hamilton’s support of New York’s 1787 divorce law and abhorrence at France’s 1792 revolutionary divorce law is explained by

\textsuperscript{38} Barker-Benfield, \textit{Abigail and John}, 255-257.

considering the culture of sensibility’s emphasis on sympathy for others and the view of republican marriage.

Those who favored divorce in late eighteenth-century America did so in order to create happy, harmonious conjugal relationships, which would provide the basis of a happy, harmonious republican society. Adultery, because of its disruptive effects to mutual affection and its ability to disrupt the stability of society, was the uncontested cause for people who favored the creation of divorce laws. Moreover, it had more historical and scriptural support as a ground of divorce than any other cause. Taking this into consideration, New York’s 1787 law that allowed divorce for adultery suggests that New York’s legislature, as American republicans in general did, sought stability in society, even when it allowed divorce. By limiting New York divorce to adultery cases, the legislature assured that it would not undermine social stability, and as chapter 4 shall discuss in more detail, it intended to fix problems that already existed. It accepted divorce not as a means to produce individual happiness or will, but to provide relief to “objects of distress.” Hamilton’s use of the virtue-in-distress narrative to explain his adulterous affair in the hopes of gaining sympathy and to maintain a sense of private virtue, along with his view of the immorality of the French Revolution’s liberal 1792 divorce law, shows that he viewed divorce as a way to help distressed, innocent spouses whose marriages had already been destroyed. The culture of sensibility, and the popularity of virtue-in-distress novels, helped inform Hamilton, Rush, and Rogers on how to explain their love-lives. Moreover, the cultural landscape of Hamilton’s New York explains the creation of New York’s divorce law, and as we shall see, accounts for the more sympathetic view of the Early Republic that was replaced in the 1810s by a more moralizing and reactionary legal
culture regarding women and divorce. But in post-revolutionary America, divorce could provide a way of dealing with the imperfections of the ideal. Although it would not alter the ideal itself, and therefore could provide no comfort to Rush, who had to wait to marry until he established himself, or Rogers, who failed to find a suitable mate for herself, divorce could provide a remedy for those who were already married and found that their spouse had failed to hold up his or her end of the marital contract.
Chapter 4

New York’s Chancery Court and Marital Finances

I have by your Bounty always had enough to serve me any time as to applying to the wretch who I owe my Misery to as being dependent on him for any thing I would rather buy my Bread.
– Elizabeth Gouverneur to Isaac Gouverneur, 1786 or 1787, in Chancery Court Miscellaneous Files.

According Isaac’s brother-in-law, Lewis Ogden, Elizabeth Gouverneur wrote to him that “in Consequence of her Offence so acknowledged in the said Letters, she would be denied support.”¹ Perhaps she did not write to him at all and he simply created the dialogue in order to further tarnish her reputation in Court. The Court records show that the statement was part of his testimony for the case. Still, a more likely possibility is that she considered Ogden her friend and she wrote to him in hopes that he would or could do something to ameliorate her desperate situation. In a letter to her mother Elizabeth had expressed the same sentiment, albeit in more emotionally charged language: “if you and my Husband discard me, What is to become of me….”² When Elizabeth wrote to her mother, she did not know that the letter would be seen by anyone else, and she certainly did not know that it would be used in her divorce trial. Aside from the various religious interpretations of what marriage means and the emotions of the partners, the necessary economic collaboration between a man and a wife joined them together in a practical

¹ Isaac Gouverneur v. Elizabeth Gouverneur, 1787-89. New York State. Court of Chancery, Miscellaneous files, 1772-1847, J0087-82 Box 64 G-96, New York State Archives.
² Gouverneur, Miscellaneous files, J0087-82 Box 64 G-96.
manner. She appreciated the reality of her situation as a “feme covert,” a married woman who legally could not own real property. Elizabeth’s fears of financial ruin were not irrational; they showed how she expected her society to react to her “sin.”

Instead of creating a bill for Isaac’s divorce, that is, in accordance with existing procedure, Alexander Hamilton’s committee drafted a bill to make judicial divorce legal in New York. Once the bill went to the Council of Revisions, it met with resistance because some members disagreed with a clause forbidding the guilty party to remarry. The debate over allowing both spouses to remarry was not new, at least in the Atlantic world, as a similar debate occurred in Scotland before the passage of a 1600 law that forbade the guilty spouse to marry the person responsible for his or her guilt. Protestant Europe, with the exception of England, maintained similar divorce laws because the Protestant Reformation held marriage to be a contract instead of a sacrament. The debate over remarriage showed that a conservative element dominated the creation of New York’s law but that more liberal elements existed. The bill for “An Act directing a mode of Trial, and allowing for Divorces in cases of Adultery…” passed with the clause intact.³

Placing divorce under the jurisdiction of an equity court, the Court of Chancery, showed that New York policymakers viewed marriage as an economic relationship, at least as far as the Court could be involved; the Court mainly dealt with property disputes, but it also ruled on cases involving children and “lunatics.” Susan Lebsock found that for literate Virginians, marriage was as much about money as it was about romance. The rise

³Alexander Hamilton, *Papers.* Eds. Harold C. Syrett and Jacob Cooke (New York: Columbia University Press, 1961-1987), 4:70-71, 4:125. Divorce was not legal in New York during British rule. Some divorces were granted by the legislature after the Revolution, but judicial divorce was not legal until 1787. Dutch rule had allowed divorce, and a 1672 divorce on the basis of a wife’s adultery was probably an institutional carryover. In Pennsylvania, William Penn’s Great Laws (1682) legalized divorce based on adultery, but by 1700 these laws were disallowed by the British government because Penn tried to extend grounds for divorce to all sexual offenses. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 142.
of the companionate ideal raised expectations for marital romance, but economics remained a consideration. Ruth H. Bloch explains that marriage laws in colonial New England were to defend parental authority to allow parents the ability to “channel the emotional attachments of the children,” while marriage laws in England and Virginia were intended to protect property.\(^4\) Divorce in early New York suggests that economics played a significant role, but that other factors were important. For people in late eighteenth-century America, the court system could act as a mediator between spouses. Moreover, it attempted to correct the economic disadvantage created by the concept of feme covert.

As fames covert, married women were legally covered by their husbands. A husband controlled the couple’s property, his wife’s labor, and their children; he also had a greater earning capacity. The influential English legal scholar Sir William Blackstone described the concept of feme covert by explaining that upon marriage a man and wife were one person, at least legally, and that person was the husband. Tapping Reeve, a Connecticut Supreme Court Justice, disagreed with Blackstone’s explanation of the feme covert, yet believed it was necessary to uphold the validity of a woman’s inability to make a contract. Reeve feared coercion of wives by their husbands, which would make a contract suspect since wives might sign them under duress. In addition, a husband’s right to his wife’s body could be interfered with if she was allowed to contract since she could be held accountable; if she were jailed, he would be denied sexual and household

services.\(^5\) Even if married women did obtain the status of feme sole, meaning they could do business in their own right, their earnings could still be claimed by their husbands. American women gained property rights in the nineteenth century, although Marylynn Salmon maintains that married women’s property acts concluded an evolutionary process and did not represent a break from the post-revolutionary era.\(^6\)

While laws were created during the early Republican period that improved women’s legal status, women remained, for the most part, economically dependent on men, at least legally if not always in practice. In her study of Petersburg, Virginia, Lebsock concludes that men could survive financially without marriage, but marrying for money could bring men more power. In contrast, women remained more desperate to be married because they usually lacked the option to support themselves.\(^7\) She notes young wealthy widows’ reluctance to remarry in order to point out that upper-middle class women viewed something amiss in marriage, even though the ideal of companionate marriage was supposed to benefit this class the most.\(^8\) The husband’s actions decided the success or failure of the companionate ideal since he maintained real power. He could be a benevolent master or a tyrant. Although Lebsock’s investigation demonstrates the improvement in the circumstances of post-revolutionary Virginian men and women, northern women failed to benefit in the same way. Salmon explains that the northern


\(^7\) Lebsock, *Free Women of St. Petersburg*, 22-23.

\(^8\) Some married women in Virginia could protect their property through separate estates; Lebsock believes this does not suggest active feminism, but was a defensive measure to guard assets. Lebsock, 27-33, 78.
states hindered female autonomy more than the southern states did, holding that northern families were more harmonious. There is no evidence they actually were.

Self-Divorce

Discontented husbands and wives resorted to self-divorce, and it is likely that there were more self-divorces than existing records show. Newspapers advertisements provide evidence that spouses took it upon themselves to end their marriages. Husbands published such notices in newspapers to urge others not to allow their wives to contract debts in their names. When James Widdowson published an announcement in *Rivington's Gazette*, his wife responded with her own announcement. Alice Widdowson explained that she had gone to the police to get a separation from her husband because he beat her, her infirmed mother, and their servant. The police agreed to the request, and papers were drawn up for the separation, but James had refused to sign. Alice published an ad in the paper because she “has so much respect for her character, that she would by no means wish it should be traduced…” She wanted to set the record straight in the court of popular opinion. In doing so, she pointed out that she had been the financial provider: “she has never for these three years last past received any kind of maintenance from her husband, but has always supported him as well as herself.” In her ad Alice showed others that her husband had failed to fulfill his role as financial provider. The Widdowson case was unusual in that most advertisements did not prompt a rebuttal by the wife, but it was not unusual in that a husband renounced his duty to pay his wife’s debts.

The newspaper notices were not a post-revolutionary creation, as the 1733 equity court case of Engoltio v. Johannos Schipmods illustrates. The couple was married in 1730, and three years later, Johannos published an advertisement that claimed his wife

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9 *Rivington’s Gazette*, Feb. 6, 1779.
had eloped and that he forbade people to give her credit on his account. After she saw the ad, Engoltio petitioned the court of equity to request maintenance from Johannos.

According to her, Johannas had “violently assaulted and beat her” and demanded she leave his house or the same would continue forever. On her own, she suffered to the point of starvation. In her bill, she asserted that his actions were “not only contrary to equity & Good Conscience but Even to humanity.” Engoltio’s statement suggests that elements beyond finances were significant to the people involved. The focus on finances should not distract from or ignore the emotional pain that people felt. The purpose of elopement advertisements was financial, and the purpose of equity courts was financial justice; they were not intended to deal with feelings.

Clare Lyons includes elopement advertisements in newspapers as part of her discussion of self-divorce. She asserts that eighteenth-century women in Philadelphia and surrounding regions “lived in an economic and cultural environment that made leaving a marriage possible, if sometime difficult,” as the advertisements suggest. Lyons also claims that elopement notices were “recognized by the community at large” since the notices appeared in newspapers throughout the eighteenth century in Philadelphia. Lyons does not cite court cases in her discussion of self-divorce. The evidence for eighteenth-century New York, taken from court records and newspaper advertisements, demonstrates that women feared financial ruin or suffered from abject poverty when they were separated from their husbands. And the use of newspaper advertisements, also a

common occurrence in New York, may suggest popular acceptance of self-divorce, as Lyons contends, but that does not imply that the notices would be upheld legally.\textsuperscript{11}

During the revolutionary era, the author of an elopement notice ended up in court years after his wife had contracted debts in his name. The case of John and Charity Alner involved character assessments of John and Charity but in the end the court focused more on the economic situation. The judge ruled that John had to provide annual payments to Charity, which included retroactive payments for the time since 1781, when she left, to 1788, when the final decision in the case was made. Charity’s creditors were to be compensated from the annuity payments that John was to pay. Thus, in the end, John had to pay the debts Charity incurred after their separation. Their case demonstrates that such advertisements failed legally to release the husband from financially supporting his wife.

The details of the case suggest that issues involved in the breakdown of the marriage did not influence the decision. John Alner, in a drunken rage, had forced Charity and their two youngest daughters out of his house. He “refused her any shelter or any manner of support.” As a result of “his Cruelties and Malice,” their daughters joined their mother in her “misery and poverty.” Five years later, Charity and John were in court. Charity, through her “next friend” George Fisher, explained to the Court of Chancery that she was there to obtain “a comfortable maintenance in her old age.”\textsuperscript{12} It was the financial difficulties Charity faced that opened their private lives to the Court and to the historical record. The now aged Charity found it difficult to provide for herself and

\textsuperscript{11} Clare Lyons, Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830 (Chapel Hill: Published for Omohundro Institute of Early American History by the University of North Carolina Press, 2006), 15, 30.

\textsuperscript{12} Charity Alner v. John Alner. 1786-1788, in The Papers of Aaron Burr, 1756-1836, edited by Mary-Jo Kline and Joanne Wood Ryan (Glen Rock, NJ: Published for the New York Historical Society by the Microfilming Corporation of America, 1978). Since women were not legal beings, they had to sue through a man, referred to as a “next friend.” Divorce cases were exceptional in that women could sue without the assistance of a “next friend.”
her two daughters, one of whom was crippled because she had deformed feet and hands. For his part, John was distraught over Charity’s creditors’ bringing suit against him for her debts.

The Alners’ marriage had started on a brighter note, at least according to Charity. In the 1750s, a young John, even though in “low circumstances” at that point in his life, courted Charity. He won her over with pretensions of “great love and affection.” “By their joint Industry Labour, and Economy” they acquired a large estate by which they supported their six children. She noted that at one time John had been “temperate, industrious, and sober.” Yet shortly after their vows, John started to change. Over the years, he drank more, worked less, and beat his wife and children more often. Charity met his violent rages with “meekness and patience,” hoping to “soften his natural severity,” but it was in vain. He bruised and repeatedly threatened her and her children’s safety. A number of neighbors, at least those who lived near Charity for more than a decade, testified that Charity was a good wife, describing her as “prudent,” “sober,” “industrious,” “meek,” “tender,” and “affectionate.” On the other hand, John was “ill-natured,” “not sober,” “morose,” and “passionate.” According to one witness, Jane Dickinson, Charity’s final decision to leave John was based on the repeated violence against her and her children, along with his illness, presumably a venereal disease, which he contracted from another woman. Dickinson noted that it would have been “very unsafe for the said Complainant to continue with him.” Another female deponent described how she once walked into the Alners’ house after hearing a disturbance. She saw John striking
Charity while they were both seated. Charity’s face was “swollen and bruised to a considerable degree and rendered shocking.”

Although the majority of witnesses create the image of a violent man who repeatedly beat his wife for three decades, a few did attempt to discredit her. One woman, who lived next door, in the house adjoining and belonging to John Alner, claimed that Charity did not “behave towards her husband as a prudent and affectionate wife ought to have done…” She stated that Charity held “the foot of a Bedstead over the head of the said Defendant, and with harsh and abusive language there after that she would split his head…” Most of the witnesses for John’s side though focused on financial issues. They pointed out that Charity had taken money from John when she had left his home years before. She had admitted to this, but she, some witnesses, and even John explained that she had returned a good deal of the money. John’s brother told the court that John had many debts, and so his financial situation was not good. Nonetheless, many of the other witnesses believed that John possessed a sizable estate, including multiple plots, at least two residential dwellings, a store front, and two “water plots” in the East River; the Court seems to have agreed that John’s financial situation was not in dire straits.

Each side tried to justify why it should have control over assets. John denied that Charity did much throughout their years together to help obtain the estate that they had. He assured the court that it was gained through his own industry. Charity, on the other hand, asserted her essential part in building their estate over a thirty year period. She also pointed out that she entered the marriage with fifty pounds, while John failed to bring much of anything to their partnership. Most of the witnesses noted Charity’s industry

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13 Charity Alner v. John Alner, Papers of Aaron Burr.
14 Charity Alner v. John Alner, Papers of Aaron Burr.
with the rare exception of some, but not all, of John’s witnesses, who claimed the opposite. In the end, the court awarded Charity a maintenance by John until such time that he allowed her to return to live with him. The judge apparently ignored, or discarded, the repeated violence, which numerous witnesses had confirmed, when he gave this order. One witness explained that he was aware of the problems between John and Charity, even before the revolutionary war. He was, at that time, a Magistrate, and, if he remembered correctly, a complaint had been filed against John for his abuse of Charity. Notwithstanding the record of abuse, John had claimed that he had not been violent toward her and had asked her to return to his “bed.” It is not clear what happened afterwards, but, according to the court, the annuity payments would end if John would let Charity back. There was no clause that said Charity had to agree to move back in with John before the payments stopped.

The Court’s focus was on the economic situation, not the marital breakdown that had occurred or the instances of domestic violence. The Court was more concerned with the financial division. The marital breakdown had happened in the distant past, and Charity, by leaving in 1781, had completed the break, but their tangled finances and Charity’s poverty brought their self-divorce before the court. The Alner case spanned several years, finally ending in 1788. Neither spouse ended up suing for divorce, even though divorce had been made legal by that time.\(^{15}\) Cases similar to the Alner case probably contributed to the divorce law of 1787.\(^ {16}\) The Alner case shows the

\(^{15}\) Charity Alner v. John Alner, *Chancery Minutes*, J0059.
\(^{16}\) Hamilton’s support of property rights and his respect for the process of law, probably led him to want to regulate such informal separations to clear up any conflict over the right to property. What is interesting is that Hamilton was an illegitimate child because his mother Rachel Lavine could not marry his father because she was divorced under Dutch law, which did not allow remarriage. Perhaps Hamilton’s situation influenced the focus on maintaining legitimacy of children of divorced parents.
shortcomings of informal self-divorce. The continuation of their joint finances forced
John to be called to court to pay his estranged wife’s debts. While he thought he had
taken care of it through his newspaper advertisement, he was still responsible for his
wife’s debts. Instituting legal divorce officially separated the finances of husband and
wife who obtained one. After a divorce, each spouse would be free of the other’s debts.
Yet divorce did not mean that a husband avoided providing financial support for his
family. The economic inferiority of women played a significant role in cases of marital
breakdown, and therefore the awarding of alimony and child support was a part of
divorce cases in late eighteenth-century New York. Even though Charity and others
pointed out her financial input, she had no legal claim to it as a married woman; the Court
attempted to remedy this situation by awarding maintenance to wives who were separated
from their husbands. In short, the Court could provide a clear explanation of remaining
responsibilities that would prevent a husband from being responsible for unexpected
debts incurred in his name and would assure a wife a minimum subsistence. Still
supported by her ex-husband, a wife would not become a burden to the state or local
charities. As Nancy Cott points out, southern judges in divorce cases would award
alimony or property to a guilty wife to keep her from starving or going on poor relief.
Cott maintains that this “kept in place the assumption that wives were dependents with
disabilities, husbands their supporters.”17

Although Charity was the innocent spouse, Elizabeth, as the guilty spouse, found
that the Court also considered practical matters over moral punishment. The divorce law
of 1787 did contain elements of moral judgment because it allowed women and men to

17 Nancy F. Cott, Public Vows: A History of Marriage and the Nation (Cambridge: Harvard University
Press, 2000), 49.
sue for divorce based on the ground of adultery. The complainant had to be innocent, and the defendant had to be found guilty of adultery; the guilty party was forbidden to remarry. The law remained unchanged until 1813, when slight alterations were made that allowed the guilty spouse to remarry when the innocent spouse died and also allowed for divorce *a mensa et thoro*, more akin to a separation, in cases where a husband was unfaithful or extremely cruel to his wife. According to Hendrik Hartog, a wife would benefit from the separation more because it usually meant that the wife had the right to recover property, obtain alimony, and was usually granted child custody.  

The Chancery Court records up until 1800 suggest that divorce *a vinculo matrimonii*, which freed the spouses from the obligations of marriage, provided similar results to the separations granted after 1813, with the notable exception that in the later cases alimony was restricted to guilty wives. New York women before 1800 often received alimony and child support, which implies that they also were granted custody. The Court’s requirement that a husband must provide maintenance for his former spouse suggests that divorce *a vinculo matrimonii* did not release both spouses from the obligations of marriage.

**Alimony and Child Support**

Isaac accused Elizabeth of committing adultery in 1786, and Elizabeth’s own letters showed that she was guilty. She admitted to Isaac that she had committed adultery with James Cadell, although she claimed she had not consented to sex. The proof, besides Elizabeth’s own confession, was her giving birth to a son which, given the physical separation, attested to by a number of witnesses, proved that Isaac could not have been

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the father. All involved in the case admitted Elizabeth’s guilt, including Elizabeth. Notwithstanding her guilt, the Court required Isaac Gouverneur to pay five hundred pounds a year for the “maintenance and education” of the children born during his marriage to Elizabeth, which included the child she had with Cadell, evidently protecting the community from having to bear his cost.\textsuperscript{19}

Other early cases followed suit and awarded alimony and child support to the guilty party. When Paul Speed won a divorce against his wife Catherine, the Court pointed out that “nothing in the said Decree of Divorce shall prejudice the said Catherine Speed as to her right to apply…for alimony.” The Court found Agnes Gifford guilty of adultery and yet awarded her alimony (no children were mentioned in the case.) The Court inquired into the financial situation of Edward Jones and the “present circumstances” of Phoebe Jones, who was found guilty of adultery, before it decided what Edward should pay to Phoebe. Ann Bingham, innocent, received custody of her children, and the court inquired into the possessions of Charles to decide how much should go to Ann for the support of her and her children. The Court ordered David Campbell to pay his guilty wife Elizabeth thirty-five pounds a year, which was substantially lower than other alimony and child support awards and was conditional on the child residing with Elizabeth.\textsuperscript{20} Still, the decision probably had more to do with his inability to pay than with her guilt.

\textsuperscript{19} Gouverneur, \textit{Minutes}, J0059.

\textsuperscript{20} Paul Speed v. Catherine Speed, Edward Jones v. Pheobe Jones, Charles Bingham v. Ann Bingham, David Campbell v. Elizabeth Campbell, Isaac Gouverneur v. Elizabeth Gouverneur, \textit{Minutes}, J0059. Minutes, J0059, r. 2. The amount the Court required Isaac Gouverneur to pay was on the high end, while the amount the court required of David Campbell was on the low end. When the court awarded such payments, the amounts fell within this range and were by no mean representative of what most women were awarded.
The divorce law, which punished the guilty spouse by preventing him or her from remarrying, awarded alimony and child support to guilty wives. The paradox involved here is explained by the practical, sympathetic stance judges and policymakers took in the early years of the State of New York. The Assembly was divided over the remarriage clause, and a number felt strongly enough that they were going to reject the divorce law altogether because they did not want it. According to Basch, the Council of Revision vetoed the bill because they feared immoral and illegal unions would result from guilty spouses who could not remarry, and there was no practical way to confine them to a cloister to assure they remained chaste.\textsuperscript{21} While it is possible that some may have wanted to avoid punishment, Basch’s point further suggests that practical considerations were a normal part of the discourse. Regardless, Hamilton had persuaded enough to pass it because it would be better than forbidding divorce altogether.

Hamilton probably had Isaac in mind when he claimed divorce could help “real objects of distress,” as Isaac’s reputation suffered because of his wife’s actions. Even if Hamilton viewed Isaac as an “object of distress,” the law was not used as a moral lesson for his estranged wife. The Court also seemed to understand Elizabeth’s actions by attributing it to her passion and youth. She was not completely cast off. While she could not remarry and therefore had no option of marrying to help her economic situation, she was provided for financially. The Assembly had intended, or it can at least be assumed that it intended, for the court to rule in such a manner. The Assembly was vigilant of women’s well-being as it also had created a law that provided dower rights for widows and one that sought to hinder rape. Nonetheless, the primary concern was probably the welfare of children, as it had been in the writings on divorce by Adams and Jefferson.

\textsuperscript{21} Basch, \textit{Framing Divorce}, 40-41.
The Assembly permitted divorce only if “such dissolution of such marriage, shall in no wise [sic] affect the legitimacy of the children thereof…”22

The Chancery Court ordered that Elizabeth’s son with Cadell would be considered legitimate after the divorce of her and Isaac. The Assembly’s and Court’s concern that children be label legitimate and not bastards relates to ideas that came out of the enlightenment and were internalized by American revolutionaries during the last half of the eighteenth century. The revolutionaries condemned the hierarchy of the old world. Salmon points out that inheritance law in America also broke from tradition by discarding primogeniture and granting daughters more rights in family property because of the rhetoric of equality.23 The difference from the early Republican period and the mid-nineteenth century, regarding legitimacy, follows suit with the shift in alimony awards.

**Backlash**

If Elizabeth and Isaac had sought a divorce after James Kent became chancellor in 1814, Elizabeth’s son with Cadell would have been considered illegitimate after the couple’s divorce. Kent’s perspective is significant because he was chancellor of New York from 1814 to 1823 and therefore had the power to decide divorce cases. In his *Commentaries on American Law* Kent explained the state of the law as it applied to children of divorcees or to be divorcees:

> but this dissolution is not, under certain circumstances, to affect the legitimacy of the children. If the wife be the complainant, the legitimacy of any children of the marriage, born or begotten of her before the filing of the bill, are not to be affected by the decree; and if the husband be the complainant, the legitimacy of the children, born or

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23 Salmon, *Women and the Law*, xvi. Debicki found that the Court, in a 1847 case, ruled that a child who was not the husband’s biological child would be considered illegitimate. Debicki, *Themes in the Empire State*, 73-74.
Kent’s assertion on the law as it relates to legitimacy does not indicate a change in early New York legal thought or practice, but late eighteenth-century cases contradict Kent’s statement and suggest a significant change in divorce law by the time of Kent’s chancellorship. While a child born while his or her mother was married, regardless of his biological father, remained legitimate during the early years of New York divorce, according to Kent, a child born to a married couple, but not the biological child of the father, would be considered a bastard child upon the married couple’s divorce. The shift shows a turn toward a more moralistic policy at the cost of maintaining the legitimacy of a greater number of children. Likewise, Kent’s explanation that a wife’s guilt or innocence would determine her eligibility for alimony also demonstrates the shift away from pragmatism intended to create a stable, more egalitarian, society towards a policy intended to regulate female sexual behavior. Kent’s views can be seen as part of a trans-Atlantic reaction against the French Revolution.

Cott found that the increase in American divorce during the nineteenth century resulted in a reactionary response. Stephanie Coontz’s study of marriage throughout time and space suggests that the fear that the institution of marriage is in decline is a fairly consistent view because she found that people throughout the world have been worrying about the decay of marriage since ancient times. Bloch begins *Gender and Morality in Anglo-American Culture, 1650-1800* with a discussion of twenty-first century Americans who “bemoan the…‘crisis of the family.” Still, the repeated occurrence of fear does not

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indicate that the level of fear is always the same. Cott found that the popular imagination became more consumed with divorce throughout the nineteenth century than it had before that time in America. It is probable that a number of factors, including the reaction against the French Revolution, the changing economy, and the increasing access to legal divorce contributed to a fear that the institution of marriage was in decline. Zagarri suggests that the reaction was against the changing gender relations, or the perception that things would change, because of the Revolution’s rhetoric regarding equality. The timing of the reaction against increasing gender equality fits with the shift in New York’s divorce policy.25

Kent insisted that New York’s law followed British tradition and was superior to the French Revolution’s divorce policy. Historian Roderick Phillips describes France’s law of 1792 as ahead of its time since only late twentieth-century laws provide similar provisions for child custody and alimony.26 Kent considered the French revolutionary policies as an attempt to destroy marriage. “But the French Revolution, like a mighty inundation, swept away at once the laws and usages of ages; and, at one period, the French government seemed to have declared war against the marriage contract.” Kent went on to note that in Toullier’s commentaries on the Napoleonic Code, which diverged from the more liberal revolutionary divorce law, Toullier could not “withhold his astonishment at the perversion of moral sentiment which prevailed, even among the enlightened and exalted jurisconsults of ancient Rome, on the subject of the right of

divorce.” 27 Kent’s negative perception of the French Revolution is clear. As he noted
Toullier’s inability to hide his view that Ancient Rome’s divorce policy demonstrated
depavity, Kent was unable to conceal his horror over the liberal French divorce policy.

Kent’s Commentaries shed light on the variations among the American states’
divorce laws and European divorce laws, but it also illuminates Kent’s view on what
constituted appropriate laws and gender relations. Kent wrote, “Some of the jurists are of
opinion, that the adultery of the husband ought not to be noticed, or made subject to the
same animadversion as that of the wife; because it is not evidence of such depravity, not
equally injurious in its effects upon the morals, and good order, and happiness of
domestic life.” He cited philosophers, including Montesquieu, who “insist, that the cases
of husband and wife ought to be distinguished, and that the violation of the marriage
vow, on the part of the wife, is the most mischievous, and the prosecution ought to be
confined to the offence on her part.” Although at times, he attributed ideas to others and
appears to be an objective correspondent, his presentation of the material conveys his
bias. Kent’s inclusion of views which maintained that women guilty of adultery had
committed a greater crime against society than men suggests his acceptance of such
views. Kent’s censure of the French Revolution marriage policy demonstrates that he was
not against expressing his objection, so his ending a section of his Commentaries with the
following, without denunciation, suggests approval: “Montesquieu, Pthier, and Dr. Taylor,
all insist, that the cases of husband and wife ought to be distinguished, and that the
violation of the marriage vow, on the part of the wife, is the most mischievous, and the

27 Kent, Commentaries, 104.
prosecution ought to be confined to the offence on her part.”

More explicitly, Kent stated that it “is very questionable whether the facility with which divorces can be procured in some of the states, be not productive of more evil than good. It is doubtful whether even divorces for adultery do not lead to much fraud and corruption.

Kent’s tacit approval of judging the sexes differently for the same crime is in accordance with the alteration in New York’s divorce policy under his tenure as Chancellor. While Elizabeth Gouverneur, as a guilty adulteress, was provided for financially, guilty wives throughout most of the nineteenth century would be completely cast off. Guilty spouses were to be punished in order to provide a moral lesson, but the lesson would have a different impact on women and men. By not allowing alimony to the guilty spouse, the policy was aimed at guilty wives, not guilty husbands. Husbands usually did not expect to be granted alimony because they were supposed to provide for their families, whether they did in reality or not. The legal reality of the time was that married women lacked property rights. Even if the wife’s labor had provided the couple with their property, it was the husband’s property. It was also expected that wives lacked the ability financially to support themselves, much less their children; therefore to deny support to wives was more significant to their position than it would have been to deny a guilty husband support. The policy had the potential to exacerbate the gender inequalities


29 Kent, Commentaries, 105. See Debicki, Themes in the Empire State. Basch, Framing American Divorce, and Hartog, Man and Wife, for the financial punishment of guilty wives throughout the nineteenth century in New York. Most Protestant countries often held men and women accountable for adultery. England’s denial of divorce to women whose husbands committed adultery proved to be the exception. The equality of the sexes to sue for a divorce on the basis of adultery suggests that New York followed European, but not English, practice. Leneman, Alienated Affections, 6.
present in the early United States. It is possible that the changing economy made women less dependent on men and influenced policymakers, who did not see the economic situation of women as all or nothing, since it was possible for a woman to work in factories, even if it was socially unacceptable for middle-class married women to do so. Notwithstanding, Kent made it apparent that his view of divorce was part of a reaction against the French Revolution.

Kent pointed to the number of divorces in Paris to support his claim that French revolutionary divorce was immoral and had sought to destroy marriage. Kent also did not consider the reasons why Parisians had flocked to obtain divorces. Historian Roderick Phillips points out that the divorce law was not part of the revolutionaries’ plan to do away with marriage. The revolutionaries actually wanted to achieve the opposite: harmonious stable marriages, just as American leaders wanted to do. The more radical French wanted to destroy past traditions, but they also attempted to create new ones, including la fête des époux, which was to celebrate virtue, marital fidelity, and filial piety. In addition to celebrating marriage, the revolutionaries intended divorce to deter marital conflict because it could lead to dissolution of the marriage. The overall goal of creating a more egalitarian society was supposed to create familial harmony. Divorce was to be a last resort. Still, the hindsight of a late twentieth-century historian is inconsequential to the men and women of the early nineteenth century in America, who lacked access to Rouen records and probably had no desire to undertake such an intensive study of divorce in France.30

Despite the intention of the French revolutionaries, their actions did provoke a conservative reaction in America that condemned France’s marriage policy. Knott writes that the French Revolution provoked a “backlash against sensibility” in America that was “Wholly inseparable from events across the ocean.” She explains that while “American women had petitioned, boycotted, rioted, fought, and sought widows’ pensions,” they had never challenged accepted gender roles. The more egalitarian tone of the French Revolution influenced Americans, as the “terms ‘citizenship’ and ‘cites’ suddenly turned up in nuptial documents.” Knott sees Rush’s statement, “The happiest marriages I have known have been those when the subordination I have recommended has been the most complete,” as his “defensiveness” that “fits squarely in these same reactive trends.” Barker-Benfield explains that “excessive sensibility had become associated with the excesses of the French Revolution” and was connected with sexual politics as William Godwin’s revelations of Mary Wollstonecraft’s “unorthodox sexual behavior” came out, which he “defended on the basis of her finer sensibility.” Zagarri argues that the “specter of Mary Wollstonecraft, female suffrage in New Jersey, and the activities of ‘female politicians’ confirmed the possibility that even if American women were not yet demanding political rights, it would be only a matter of time before they would do so.”

The trans-Atlantic reaction against the French Revolution influenced New York’s divorce policy. Until the turn of the nineteenth century, the Court allowed wives undergoing a divorce to petition the Court for alimony and child support payments from their husbands. Innocent and guilty women obtained financial support from their husbands. The Gouverneur case, in addition to other early cases, suggests that although

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the complainant, defendant, and witnesses stressed the wife’s virtue or lack thereof, such character assessments appeared to have no bearing on the Court’s final decisions regarding finances in cases of marital breakdown. The Court considered more practical matters rather than whether someone was morally deserving of support. Chancellor Kent, being influenced by the reaction against the French Revolution, believed an adulterous wife was more detrimental to society than an adulterous husband; the shift in New York divorce reflected the conservatism of the post-French Revolutionary period.
Isaac and Elizabeth’s marriage began on the Dutch West Indian island of St. Eustatius, a center of Atlantic world trade. Their merchant class backgrounds allowed them a privileged position that separated them from poorer whites and black slaves, and made it possible for them to own slaves. The happy marriage that Elizabeth claimed she had with Isaac is hard to imagine when confronted with the realities of their short time as a married couple in St. Eustatius. They were probably married in 1778, when Elizabeth was probably eighteen and Isaac was about twenty-nine years old. They had a daughter early in 1779. The description of Isaac’s capture by the British in 1781 mentioned his wife and young child. Undoubtedly the child was their daughter Susannah, who was noted as being about nine years old in 1788, and so she would have been about two years old in February 1781. The British removed Elizabeth and the two-year-old Susannah from their house, and their lives from this point until when they moved to New York City after Isaac’s release in 1783 remain unknown. Nonetheless, it is reasonable to conjecture that it was a stressful period. Their property, including their slaves, had been confiscated, and Isaac was imprisoned in England.

Perhaps the Gouverneurs were content during their first few years of marriage before the British captured St. Eustatius. Isaac would have been busy with the bustling wartime trade, and Elizabeth could have passed her hours working in the house, visiting
with friends and family, and taking care of Susannah after she was born. Moreover, the
description of Isaac’s capture states that they had books, which, considering it was seen
as a detail important enough to record suggests that they had a sizable collection for their
time and place, as well as demonstrating the scarcity of books as part of personal
belongings then. So it is possible that Elizabeth spent time reading. Although the
historical record does not specify what was available for her to read, she was well versed
in the language of sensibility by 1786 or 1787. It is feasible to believe she was reading
sentimental novels while in St. Eustatius, since she was the wife of a merchant who
conducted a lucrative trade during the American Revolution, and therefore she was of a
socio-economic class that would have made this possible. Moreover, St. Eustatius was a
center of international trade, which encouraged the transmission of culture as people and
goods crossed national borders.

Within a couple years of their move to New York City, Isaac and Elizabeth were
residing in different states. In 1785 Isaac was ill, which was attributed to Elizabeth’s
behavior toward him. It is possible, given that Isaac’s business partner died shortly after
his imprisonment in the Tower of London, that Isaac’s health had been compromised by
his capture and his transport across the Atlantic. Isaac’s illness could have further upset
Elizabeth, who in turn put added stress on Isaac, prolonging his recovery. Nonetheless, it
is impossible to ascertain the real cause of Isaac’s illness, or to even know if Isaac’s
illness or Elizabeth’s “violent behavior” came first. Perhaps Elizabeth had too much
sensibility, as Patty Rogers did, and the reality of her life never lived up to her
imagination that had been exposed to sentimental literature. Isaac was immersed in a
profitable contraband trade during the early years of their marriage; his absence while in
prison, and his subsequent illness would have left him little time to be the affectionate, attentive, and sentimental husband she desired. His decision, whether initiated by his relatives, friends, or himself, to have Elizabeth live apart from him must have caused Elizabeth to feel rejected and abandoned.

Elizabeth, residing with her step-uncle and waiting for her mother’s arrival from the West Indies, probably felt alone in Philadelphia and therefore welcomed the attention that Robert’s apprentice, James Cadell, showed her. He brought her novels, as Philemon did for Rogers. If the critics of novel-reading were correct, then the novels could have aroused dangerous sensations in Elizabeth. By eliciting feelings, reading made her more susceptible to Cadell, as she claimed they “helped ideas in my head which perhaps I never would have had.” Ideas invoked feelings. Following her feelings led her to have an adulterous affair and to destroy her family, precisely what critics of novel-reading had feared. Her story suggested that the widespread fear of excessive sensibility, feelings not guided by reason, was valid.

The legal system that would decide Elizabeth’s fate after Isaac petitioned for a divorce was dominated by middle-class beliefs deeply influenced by the culture of sensibility. Lawyers and jurists had been well-versed in the language of sensibility in order to persuade others, most notably juries, by appealing to feelings of empathy. Alexander Hamilton, in his role as committee head, used such language to assure the rest of New York State’s Assembly that some level of “relief” was needed for “objects of real distress,” and thus they should approve of the divorce bill of 1787. The complaints of some members could be remedied in the future by another bill, but in the meantime their sympathy for their fellow human beings should prompt them to do something as soon as
possible, instead of waiting for perfection. The Chancery Court that dissolved the
marriage between Isaac and Elizabeth because she committed adultery explained that it
was the “Consequence of Youthfulness and Passion.” She could not remarry according to
the 1787 divorce law, but she was not left destitute. She was given five hundred pounds a
year for the maintenance and education of her child with Isaac and her child with Cadell,
which suggests that she also had custody of the children. Although there is no explicit
mention of alimony in Elizabeth’s case, the Court did grant alimony to guilty wives until
James Kent became chancellor in 1814.

Her situation was not ideal as she would still have to live with the shame of being
an adulteress, a divorcée, and she would have to care for her two children as a single
woman, a status she would never be legally able to change. The ideal was an affectionate
marriage with a husband who provided for his family and a wife who aided her husband
and raised virtuous children. It was elusive for most, but to live a life far removed from
the ideal could not have been easy or desirable. Late eighteenth-century tracts on divorce
encouraged greater gender equality; Jefferson believed that divorce would be of more aid
to women than men because men have more ways to make their marital situations
agreeable. The discussions of divorce promoting greater gender equality did not mean
that divorce was a feminist action. Women in late eighteenth-century New York probably
did not divorce to achieve a feminist aim, to gain greater independence. They divorced
out of desperation, or, as in the case of Elizabeth Gouverneur, because they had no choice
after they committed adultery. Elizabeth’s pleas, along with the testimonies of other
women who came before the Chancery Court, show that divorce could be detrimental to
the financial situation of the women involved. Although Elizabeth was granted financial
assistance, her position would not be as comfortable as it probably had been in 1778 to
1781, or even in 1783 to 1785. The divorce tracts that discuss greater gender equality
demonstrate the legal and economic inequalities during the Early Republic. Divorce
could be used to lessen the consequences of that gender inequality, and therefore
contribute to greater gender equality.

It was the gender inequality, along with a culture that valued sympathy, which
explains the Court’s decision to require Isaac financially to support both children born
during his marriage to Elizabeth. The reality of gender inequality made it more likely that
divorced women and their children would become burdens to their society. Divorce was
at once motivated by sympathy for individuals who were miserable “objects of distress”
within marriage and by pragmatic, economic considerations. As has been shown, legal
judicial divorce was created within the culture of sensibility, which informed those
involved including the legislators, jurists, lawyers, complainants, defendants, and
witnesses. The sensibility of Hamilton, the members of the New York Assembly, and the
Court of Chancery of the 1780s and 1790s was to promote the good of society while
providing relief for the individual. The sensibility that informed Elizabeth was of the kind
that explains why some feared sensibility, or at least excessive sensibility. Following
feelings could lead a person to act morally, but the possibility that following feelings or
being motivated by passion could lead to destructive ends remained. Too much
sensibility could be the object of ridicule or of fear, especially after excessive sensibility
became associated with the excesses of the French Revolution. As the reaction against the
French Revolution set in, it prompted a reaction against sensibility. Sensibility would
survive but in an altered form.
Excessive sensibility became associated with the French Revolution as a result of Rousseau’s ideas, which influenced Robespierre, the Jacobin leader who presided over the Reign of Terror. Carol Blum convincingly argues that Rousseau’s writings were intimately connected to his personal life and feelings. His view of himself influenced his idea of a “Republic of Virtue,” which could only be accomplished if man’s natural goodness was allowed free rein. He fashioned himself as virtuous, and therefore he believed that whatever he did must also be virtuous, including his abandonment of the five children he had with his mistress of ten years. Rousseau followed his feelings, and this would lead him in the right direction. A central tenet of Rousseau’s works, including his fiction, was the idea that a virtuous person could not commit an immoral act because his intentions would have been good. It was this concept, whether Elizabeth found it in the writings of Rousseau or from another source, that informed Elizabeth’s view that she could not have committed a crime because she had not intended to do so.¹

Yet it should be noted that Rousseau contrasted the abilities and duties of men and women. The freedom given to men in order to allow them to be virtuous and to grow was not extended to women. Women were the inferior sex, and they should be submissive to their husbands’ needs and desires. Rousseau’s Émile prescribed his view of the ideal means to educate boys by giving them the freedom to follow curiosity. On the other hand, as Blum shows, girls were to be stifled; their submissive nature was to be cultivated and encouraged through habit, making it easier for them to fulfill their adult role. Jean Hagstrum finds more ambiguity in Rousseau’s view on women, and he believes Rousseau granted women more equality within a loving relationship because of their

natural sensibility. Susan Desan points out that Rousseau did not support divorce, and that his “influence on the marriage debate was markedly uneven.” She shows that Rousseau’s belief in women’s finer sensibility, and therefore their greater moral sense, could be used to justify different ends than Rousseau had envisioned. Instead of confining women to a subservient role, women’s superior morality could mean that “women should use their moral powers to exercise public judgment over the internal workings of marriage…” Rousseau’s views on virtue were of significant importance to the direction of the French Revolution, and the association of excessive sensibility with the excesses of the French Revolution led to a reaction against excessive sensibility as part of the “revolutionary backlash.”

In America, Federalists and antifederalists were divided over the French Revolution, with the Federalists being associated with the anti-Jacobins and the antifederalists with the Jacobins. Barker-Benfield explains that the antifederalists “held that the French Revolution was unleashing humanity in the same way Americans had.” Still, the Federalists used the language of sensibility to critique Robespierre’s rule; John Quincy Adams believed it was “a constant violation of every principle of justice and sentiment of humanity.” The sentimental language employed by each side in a partisan dispute was also used as a reaction against the possibility of women’s entering politics. Gendered sensibility held that women naturally had more sensibility, and therefore they could bring “respectability,” “civility,” and “moral value” to politics. Women were given a role, but it was limited, being confined within a patriarchal system. Mary Wollstonecraft had denounced gendered sensibility and argued that women’s association

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with greater sensibility was not the result of nature but of education. Women were weak because they were taught to be so, not because their nerves were more sensitive.

Wollstonecraft’s husband William Godwin published a *Memoir* (1798) that revealed her personal life, after she died giving birth to their daughter (who would become famous in her own right as Mary Shelley, author of *Frankenstein*). He described Wollstonecraft’s attempted affair with a married man; the illegitimate child that resulted from her affair with American Gilbert Imlay while in France; the fact that she had become pregnant before she and Godwin married; and her suicide attempts. Barker-Benfield explains that “Godwin had published these revelations…in order to defend her sexual unorthodoxy on the basis of her finer sensibility, a defense that, at that reactionary time, discredited not only Wollstonecraft’s feminism but also the tendency of sensibility to excess even more than it had been discredited already, associated as it became with the excesses of the French Revolution…” Consequently, “the rights of women were thereafter associated with women’s sexual freedom, that is, with immorality” in Britain and America.\(^3\)

Sentimental affection would continue to be important to American culture, but it would be cleansed of its potential for women’s sexuality. Shirley Samuels claims that Charles Brockden Brown, in *Arthur Mervyn*, or *Memoirs of the Year 1793* (1798), shows the fear that resulted in America as a consequence of a “major event of that year, the Reign of Terror that devastated Paris and flooded Philadelphia with refugees.” Samuels explains that the yellow fever epidemic in Philadelphia of the same year had combined with the reaction to the Reign of Terror to further reinforce the fear that destructive forces would spread from France to America. Samuels maintains that “Americans, not merely conservative Federalists, began to abhor the revolutionary principles they had initially

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embraced.” The fear was exacerbated during the Quasi-War with France, and the idea that the negative aspects of the French Revolution, including murder and rampant sexuality, would spread to America resulted in the politically-motivated Alien and Sedition Acts (1798) to contain the “loose morals and irreligion” of the French that “threatened to infect Americans.” Samuels argues that *Arthur Mervyn* “documents the rise of institutions of social order—and particularly the institution of the family—that counter the linked threats of revolution, contagion, and political and sexual infidelity.” Sexuality threatened the stability of the family as Jacobinism threatened the stability of society. Samuels argues that the novel “taught Americans what to fear,” and “Arthur’s adventures teach him to desire home and family,” and to fear the uncertainty of the “outside world.” “In France as in the United States, the problem of erring transgressing women was to be ‘solved’ through domesticity.” John Quincy Adams explained in 1821, on the anniversary of the Fourth of July, that the “sympathies of men begin with the affections of domestic life. They are rooted in the natural relations of husband and wife, of parent and child.” The culture of sensibility that informed the creation of early New York divorce had not been obliterated; sympathetic ties learned in the family had political consequences. Samuels points out that a similar sentiment was expressed by Andrew Jackson in 1837. Barker-Benfield explains that sensibility’s “sexual potentials shriveled even more by political reaction and evangelism, the Americanization culture of sensibility…” According the Nancy F. Cott, “passionlessness” dominated the way women’s sexuality was viewed during the nineteenth century, and it was “tied to the rise of evangelical religion between 1790s and the 1830s.”

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Similarly, Mary Kelley, in her discussion of female education, maintains that during the late eighteenth-century “…the meaning attached to sensibility had taken a negative turn…” and “…came to be tagged as excessive…” but Americans “instead of dismissing the affections, began to calibrate them differently.” More emphasis began to be placed on the distinction between ‘true’ sensibility that served the greater good and ‘false’ sensibility that was self-indulgent. “The supposed break between ‘republican womanhood’ and ‘Victorian domesticity’ was not as decisive as has been suggested by many historians. There was at least as much continuity as change.” Kelley shows that women capitalized on the idea of women’s moral superiority; “women used the schooling of academy and seminary to take their place in civil society. There they positioned themselves at the center, and crucial to the success, of the republican experiment.”

Kelley concludes that “linking the right to an advanced education to the fulfillment of gendered social and political obligations, post-Revolutionary Americans forged an enduring compromise. Instead of claiming that women had the right to pursue knowledge for individual ends,” Americans held that women should be educated to serve their family, or to “lead in instructing their nation in republican virtue.”

Zagarri demonstrates that “a conservative backlash had developed” by 1830. She attributes the “backlash” to the revolutionary potential for women’s political involvement and relates it to the expanding white male electorate to the explicit exclusion of free black men and white women. “For a few brief decades, in fact, significant changes in women’s
status appeared possible.” Zagarri explains that by 1800 the move toward women’s political exclusion was underway and that it “accelerated after the War of 1812, and was firmly in place by the time of Andrew Jackson’s election as president.” She argues that the reaction had as much, if not more, to do with “anticipation of the direction of social change” than “what has actually happened.” Zagarri points out the backlash to the French Revolution, but she places it within the broader context of “revolutionary backlash” resulting from the revolutionary potential that came out of the Enlightenment, American Revolution, and French Revolution. The French Revolution exacerbated the tension raised by the suggestion of greater gender equality because it presented an image of politically involved women linked to the excess and chaos of the Revolution.

The reaction against the association of women’s rights, female sexuality, and excessive sensibility led to a chaste version of female sensibility in the nineteenth century that Samuels, Kelley, Zagarri, and Barker-Benfield illuminate. This highlights the broader cultural context that helps to explain James Kent’s views on gender relations and divorce. And, in turn, the shift in New York divorce, as explained in chapter 4, further supports the phenomenon of revolutionary backlash. Zagarri points out that the backlash was already underway by 1800, but that it was a process by no means even and absolute, as Kelley’s work also suggests. Zagarri points to the War of 1812 that ended in 1814, as an important point in the process of revolutionary backlash, which was concurrent with Kent’s appointment as Chancellor. Kent’s leadership accounts for the triumph of the revolutionary backlash with regard to New York divorce policy. Kent’s writings show that he feared female sexuality, as he reaffirmed a sexual double standard that had been

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left out of New York’s 1787 divorce law and the early Chancery Court rulings. After
Kent’s rise to chancellor, guilty wives would not be granted alimony. If Kent’s
*Commentaries on Law* were the only evidence, historians could assume that there was no
change in New York divorce, as Kent assured his readers. But, the Court records from
1787 to the 1810s present an alternate picture. A subtle, but significant change did occur.
The earlier Court was less fearful of female sexuality. Although it did not agree with
adultery, as the divorce law itself demonstrates, it could sympathize with and understand
human weakness, including a woman’s failure to confine sexual passion to marriage.
Once the reaction set in, it became more difficult to even acknowledge that women had
sexual passion.
Bibliography

Primary Sources

Archival and Special Collections:


Miscellaneous files. New York State Court of Chancery. New York State Archives.

Minutes. New York State Court of Chancery. New York State Archives.

Minutes. New York State Assembly. New York State Archives.

O’Toole, James St. L. Letter of Appraisal. American Society of Appraisers. 27 February 1976. Digital copy provided by Joyce Weaver, Librarian, the Mint Museum, Charlotte, SC.


Published:


Secondary Sources


Freeman, Lisa A. “What’s Love Got to Do with Addison’s ‘Cato’?” *Studies in English Literature, 1500-1900* 39, no. 3 (Summer 1999): 463-482.


