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JOHN MILTON'S DIVORCE TRACTS AND GENDER EQUALITY IN FAMILY  
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## ABSTRACT

In recent years, John Milton's divorce tracts have been deemed predictive of modern divorce laws. Moreover, with a new wave of feminist criticism appearing in the 1970s, such critics as Catherine Gimelli Martin, Gina Hausknecht, Maria Magro, and Harvey Couch have asserted that Milton's divorce tracts are not only predictive, but that they promote the rights of women in divorce law in a way that has made Milton nearly prophetic. However, this thesis disputes the idea that Milton is supportive of modern gender equality within his divorce tracts, and asks such questions as: Does Milton attempt to gain an equal opportunity to divorce for both genders in his work? Does he desire divorce for the betterment of both spouses? And, finally, does Milton offer women any protection following a divorce? These questions are answered by means of closely examining Milton's primary text, as well as multiple historical variables, such as religion, language, societal norms, and common outcomes of divorce for women. Through an examination of these factors, it is ultimately deciphered that Milton is not supportive of gender equality in divorce law, and thus, his divorce tracts are not predictive of modern divorce legislation.

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## Introduction

John Milton is perhaps one of the most famous authors to have emerged from the seventeenth century. Much of his literature continues to be widely read in academia today, as his work contains ideas that have truly stood the test of time; ideas that have spoken to hundreds of generations after him. Oftentimes, the concepts that can be found within his poetry and prose addressed very real issues that his English society was facing. However, there were certainly times when what he argued for did not coincide with popular beliefs held by his contemporaries. Amongst the work that failed to express commonplace opinions of his peers were his pamphlets on divorce laws, which were quite possibly some of his most shocking publications (Howard 1). The idea that he was presenting to his audience, while it now seems nothing more than a basic human right, was entirely revolutionary. Quite simply, Milton was arguing for the right to divorce, not based on reasons of abuse or adultery, but merely due to incompatibility.

Because Milton's divorce tracts conveyed views that were in such opposition to the beliefs of his peers, critics have been particularly drawn to this body of work since the time of its publication. In his divorce tracts Milton suggested that married couples should no longer be forced to remain married if they were unhappy in their union. This was in complete contrast to English law of the seventeenth century that stated a complete, legal

divorce could only be permitted on the grounds of abuse or adultery. More importantly, however, Milton's idea was in opposition to the Christian Bible, which formed the basis of English society. For this reason, Milton's work was extremely controversial, and it was not widely accepted by his society or by the English Parliament. Consequently, Milton's divorce tracts failed to make any headway in divorce legislation during his own lifetime.

For years, Milton's divorce tracts were nearly forgotten, largely because they were not in line with popular opinion. However, as beliefs on divorce began to change, family law too began to undergo a transformation, and Milton's ideas seemed to appear more and more in divorce legislation. By the year 1857, ecclesiastical courts no longer had jurisdiction over divorce, and finally by 1969, over three hundred years after Milton wrote on divorce, the Divorce Reform Act was passed in England allowing divorce for marriages that had "broken down irretrievably" (Couch 576). Soon other countries adopted this concept of divorce for reasons of incompatibility, and as this legislation grew in popularity, modern literary critics began observing the similarities between John Milton's divorce tracts of the 1640s and their own divorce laws. Milton's work, in light of current divorce laws, was beginning to be classified as predictive, and at times it was even termed prophetic.

While Milton's divorce tracts, on the surface, appear to bear a striking resemblance to modern divorce laws, in order to term his work "prophetic," one must take into consideration many different facets of current divorce law. One of these many facets, and a key element in modern divorce, is gender equality. Since Milton's time, one of the greatest additions to divorce legislation has been the right for women to divorce their husbands. Furthermore, in more recent history, family law has gone as far as to

ensure protective measures for women following a divorce, oftentimes for reasons of financial instability. Thus, with these crucial elements of modern divorce in mind, critics have begun questioning the prophetic nature of Milton's divorce tracts. While it is true Milton's idea of "" divorce was revolutionary, it seems those who said Milton's work was predictive of modern divorce were forgetting to consider gender equality in their review. Therefore, in classifying Milton as predictive, or prophetic, in regards to divorce law, a series of important questions must be asked: Does Milton, in fact, argue for women to have the same opportunity to legally divorce as men? Does he pursue divorce for the betterment of both genders? And finally, does Milton in his divorce tracts try to ensure protective measures for women following a divorce? By analyzing Milton's own words in *The Doctrine and Discipline of Divorce* and *Tetrachordon*, as well as various elements of his historical context, one can determine what Milton's true intentions were in writing his divorce tracts, and whether or not his views on gender equality in divorce made him as prophetic as some have claimed.

*Background: Influences on Milton's Divorce Tracts*

Milton's historical context, as well as his biography, likely played a crucial role on his feelings toward gender, divorce, and his desire to radically change divorce legislation. By gaining an understanding of Milton's social context and the events in his life, it becomes easier to discern why Milton wrote the divorce tracts, and thus, if he was in fact considering the notion of gender equality in his work. Moreover, the events

surrounding Milton's work help to further clarify the question of how revolutionary Milton's divorce tracts were.

During the mid-seventeenth century in England, divorce was extraordinarily rare. This is mostly due to the austere ruling of ecclesiastical courts, which limited divorce based on religious text. The English government was very much in line with the laws of Scripture during the seventeenth century, and thus things such as marriage and divorce were legislated according to the teachings of the Bible. In Scripture, marriage was considered a holy sacrament, which made the marital institution all the more protected by English courts on the strict grounds of faith. Therefore, divorce was only permitted in the most extreme cases and was mostly granted only for reasons of adultery, as this was in line with traditional Christian practice (Ozment 80). Unfortunately for many, though, even when divorce was granted, it did not completely dissolve the marriage bonds. More commonly, when divorce was permitted for reasons of adultery, it was considered divorce *a menso et thoro*, or limited divorce ("Divorce and Separation: An Overview"). Divorce *a menso et thoro* only separated "the adulterous spouse from the bed and table of the innocent spouse," but did not permit either to remarry. Regardless of their separation, with this limited type of divorce couples remained husband and wife in the eyes of the church. It was both the difficulty in attaining a divorce as well as the limited nature of divorce, especially the typical inability to remarry that sparked John Milton to speak out on the issue and call for reformation.

In opposition to divorce *a menso et thoro*, or limited divorce, was divorce *a vinculo*, or absolute divorce ("Divorce and Separation: An Overview"). This kind of divorce was rarely seen in mid-seventeenth century England because it was the complete

separation of a married couple, as seen by the law and by the church. Thus, with divorce *a vinculo* the separated spouses were also permitted to remarry. While this kind of divorce was obviously appealing to all of those bound in an unhappy marriage, only few members of aristocracy sought divorce *a vinculo* through private bills to parliament. Others were forced to separate without their separation being legally acknowledged. In some cases, lower-class husbands were even known to have sold their wives (Howard 6). The reason divorce *a vinculo* was so uncommon though was because the spouses who wished to separate had to be able to prove that the marriage was faulty at its inception. This was simply due to the fact that the system of impediments and annulments granted by the church and state regulated marriage at the time of its establishment and not after the marriage had been fully recognized but was failing (Ozment 80). Therefore, in order to receive divorce *a vinculo* one needed to prove that the relationship was fundamentally defected from the start, which at times was as socially damaging as the divorce itself. Some of the major reasons for completely annulling a marriage were for things such as consanguinity, a prior contract, female impenetrability, or impotence (Patterson 280). Due to the stigma attached to these things, especially to impotence, it was difficult for anyone to request divorce on these grounds.

It was these few, and damaging reasons for permission to divorce that John Milton wished to change. In his divorce works, he earnestly promoted the concept of absolute divorce, but wanted this kind of separation to be permitted for reasons beyond such things as impotence. Instead the idea he proposed, the idea that was most revolutionary, was divorce *a vinculo* for nothing more than incompatibility, or what we might now consider “divorce”. While others made attempts to gain permission to divorce

completely from their spouse prior to Milton, he was one of the first to insist on a notion so out of context with ecclesiastical law. He also promoted the idea that both parties could remarry after divorcing if they so desired. Finally, he asked for the removal of divorce from all public jurisdictions, whether ecclesiastical, civil or private (“Milton: Doctrine and Discipline”). Milton strongly considered the right to divorce an individual liberty that should not be governed by any higher authority. He felt the individual within a marriage should have complete control over their ability to divorce, and thus, he tried to change the standing of divorce law within all governmental bodies throughout the course of his divorce tracts.

There were likely many reasons for Milton to have made the decision to call for the reformation of divorce law in the mid-seventeenth century. One reason may have been due to the changes that were occurring in other neighboring European nations in regards to marital law during his time (Howard 1). Thanks to the Protestant Reformation, other European nations began to stray increasingly from ecclesiastical law. Therefore when a divorce was granted it was seen as absolute because it no longer depended on the church’s rule to be considered completely annulled. England, though, was still not granting this right under the law despite previous attempts to change this legislation.

In 1552, Edward VI established a commission that was to bring English marital law in accord with continental practice (Patterson 280). However, the doctrine that was created, *Reformatio Legum Ecclesiasticarum*, was defeated in the House of Commons. Following Edward VI’s defeated petition, under the rule of Elizabeth and James, the Anglican hierarchy reinstated the position of cannon law (Patterson 280). Thus by the 1640s, almost a century later after England still had not achieved much legal change,

Milton decided to take on Edward VI's request for political reformation. Understanding that England, Milton's own country, was not in line with its neighboring nations in regards to marital law, Milton likely attained the desire to amend the legal system. He may have sought to change England's marital legislation so that it would further resemble the nations that appeared to be more advanced. Furthermore, Milton was a Protestant himself, so it would come to no surprise that he too wished to see the kind of benefits that were being enjoyed in other countries due to the Protestant Reformation.

While much of John Milton's early work called for the reformation of parliament in regards to ecclesiastical law, the true reasons for Milton's publication of the divorce tracts remains up for debate. There is no doubt that, given his Protestant background, he wished to change legislation so that it was not as dependent on the church. However, in order to gain a full understanding of his motives for writing on divorce, and especially his inclusion of gender equality, or lack thereof, it is first crucial to understand some of his biographical details that almost directly relate to the things of which he wrote.

Much later in Milton's life in his *Pro Populo Anglicano Defensio Secunda* Milton discusses the reasons for having written so passionately about divorce laws. In this he stated that his pamphlets were simply part of his greater analysis of the "three varieties of liberty," the three liberties so crucial that without them "civilized life is not possible" (Patterson 279). The types of freedoms to which Milton is referring here are religious, domestic, and civil liberties. However, his biography during the time he wrote about divorce seems to give reason to believe he wrote in response to the events of his own life. In fact, Milton, himself, acknowledged in his letter to parliament, found in *The Doctrine*

*and Discipline of Divorce*, the influence his own “self-concernment” played in his efforts to persuade parliament to change divorce legislation (Howard 96).

In June of 1642 Milton married the eldest daughter of a royalist family, Mary Powell. It has been said that Milton was visiting Mary Powell’s home in Forest Hill, near Oxford, in order to make a late interest payment to her father, Richard Powell, after having inherited debt following the death of Milton’s own father (“Milton: Doctrine and Discipline”). Mary Powell was much younger than Milton, reportedly about half of his age, and the marriage itself was said to have happened quite hastily. Milton’s nephew, Edward Phillips, gave an extensive account of the marriage in 1694 that has led scholars to their current understanding of the context of Milton’s first marriage. In regards to his uncle’s marriage, Phillips states, “About Whitsuntide it was, or a little after, that he took a Journey into the Country; no body about him certainly knowing the Reason, or that it was any more than a Journey of Recreation: after a Month’s stay, home he returns a Married-man, that went out a Batchelor” (Patterson 280). Thus, it can be understood that Milton’s marriage to Powell may not have been built on a lasting foundation, given how quickly they wed.

Not long after Powell and Milton wed, problems in the relationship began to arise, and Milton’s own stake in divorce reform became heightened. After only about six weeks of marriage, Powell requested to return to her home in Oxford for an extended visit. Milton obliged, and although Powell told her husband that she would be home by late September, in actuality she would not return until three years later in 1645. During her time away Milton must have contemplated the failing nature of his marriage, and due to his wife’s absence, likely considered the possibility of divorce. Given the status of

divorce law, though, he could really only divorce his estranged wife *a menso et thoro*, and he wanted more than only a separation from “bed and board” (“Milton: Doctrine and Discipline”). With his wife gone, Milton sought not only to legally separate, but also to be given the right of remarriage, something only allowed in divorce *a vinculo*. In considering his options for an absolute divorce from his wife, he realized he would have to prove that the marriage itself was never valid on the grounds that “he was impotent or Mary was frigid, or that she had been previously betrothed to another” (“Milton: Doctrine and Discipline”). However, Milton refrained from requesting a divorce because he knew that extreme embarrassment would come with any of the viable options for such complete separation. Furthermore, any one of the reasons for divorce *a vinculo* would have been detrimental to Milton’s manly dignity. Therefore, as an avid writer, and with his own stake in the reformation of divorce law at hand, Milton chose not to seek a complete divorce, but chose to instead change the nature of divorce itself.

The parallels that run between Milton’s own life and his divorce tracts have led some critics to believe that Milton wrote on divorce only as a means of bettering his own personal situation. In an article by Stephen Fallon entitled “The Spur of Self-Concernment” he makes the claim that Milton’s work was not simply inspired by personal experience, but that they are “*about* Milton” (Fallon 111). He says that the failed marriage between Milton and Mary Powell challenged the self-image he created for himself in the successful work published prior to the divorce tracts. Fallon states, then, that Milton’s divorce tracts were simply his attempt to uphold this respected status that would have been drastically tarnished by a failed marriage, or worse, a divorce on the terms of the mid-seventeenth century English courts. Furthermore, because Milton’s

image may have been so challenged by his estranged wife, his personal experiences with her may have also led to a lack of concern for females in general. Fallon also says that within the divorce tracts Milton “represents himself as a prophetic restorer of divine mercy” (Fallon 113). However he, like other critics who feel the same, does not see Milton’s work as prophetic as Milton himself may have felt it was. This is primarily due to the fact that Fallon believes that the reasons for Milton’s work were solely in response to his own needs and to pursue his own agenda. However, this view has been widely debated, and many other critics read Milton’s divorce tracts in an entirely different light.

While it seems clear that Milton wrote his divorce tracts with the events of his own failing marriage in mind, the idea that he wrote exclusively for reasons of his own agenda has sparked debate amongst modern critics. Many, such as W. Scott Howard and Sara J. van den Burg, assert that Milton’s divorce work was much more than just his pursuit of escaping his own marriage. Instead these critics argue that the divorce tracts were created in response to Milton’s contemporary political turmoil and his desire to defend, “real and substantial liberty; which is to be sought not from without, but within” (Howard 9). Critics such as these claim that Milton’s intentions were not to abolish marriage, but to reform the social regulation of marriage to suit the needs of individual people. Furthermore, the divorce tracts of John Milton are often looked at with a consideration of Milton’s own statement that he was simply pursuing the “three species of liberty, without which it is scarcely possible to pass any life with comfort, namely ecclesiastical, domestic, and civil” (Howard 9). When reading his divorce tracts in this way, one can see the understand how they can be read with a nearly prophetic interpretation, as modern divorce laws, or any other legislation, does in fact look toward

the liberty of the individual as being paramount to ecclesiastical or otherwise binding civil laws.

Whether viewing Milton's work as pursuing legislative advancement due to neighboring nations, as searching for individual liberty or pursuing his own agenda, there is no denying that the ways in which Milton refers to gender are the result of his failed marriage. Furthermore, it may be true that he wrote his divorce tracts as a way to advance the government of his country, but when considering Milton's own claim that he wrote on divorce for the pursuit of individual liberties, it seems that a more accurate statement was that he was pursuing greater liberties for men only, as women are largely excluded in his work. This, though, can easily relate back to his life events. Because his wife so abruptly left him, there is good reason to believe Milton was simply not fond of women, nor was his sympathetic towards them in regards to the outcomes they might face the event of a divorce. Of course, it cannot be said that Milton's divorce tracts were a reflection solely of his life, as there were many other factors that would have influenced his work. However, the events of his life do well to forecast the ways in which women are presented in his divorce tracts. Though his life alone cannot determine his intentions, rather a close examination of *The Doctrine and Discipline of Divorce* and *Tetrachordon* can begin to answer the question of whether or not Milton truly addresses gender equality in divorce, and furthermore, these examinations may help to answer the broader question of if Milton's beliefs on divorce were indeed in line with modern divorce law.

## Chapter 1

### **Gender Equality in Milton's Own Words: An Analysis of *The Doctrine and Discipline of Divorce* and *Tetrachordon***

Milton's 1640s work on divorce is believed to have been extraordinarily progressive according to a number of critics, specifically such critics as Catherine Gimelli Martin, Gina Hausknecht, Maria Magro, and Harvey Couch. These critics claim that Milton's work in his divorce tracts protected, or even promoted, gender equality in family law. However, upon closer examination of John Milton's 1644 publication, *The Doctrine and Discipline of Divorce*, and his 1645 work, *Tetrachordon*, as well as their historical context, the belief that he was in fact supporting a true notion of equality can be largely refuted.

#### *1.1 Milton's Major Modern Divorce Success*

First and foremost, it is important to note that in some regards Milton's work was very revolutionary and did bring to light new ideas in terms of family law. One of his biggest contributions to divorce legislation, as it is understood today, was the concept of "no-fault divorce" (Couch 576). In Milton's attempt to persuade parliament to change the laws regarding legal, and complete, marital separation, he continually stressed the idea that God's intention in creating the institution of marriage was not for man and woman to be bound indefinitely to one another, but instead that marriage was implemented in order

to create a partner for man. He furthermore states that the creation of woman was “to remedy man’s loneliness by *making him a meet help for him*” (Howard 156). Therefore, when man and wife are incompatible in either “mind or body” such that the man is not able to “cheerfully perform the duty of a husband without the perpetual dissembling offence and disturbance to his spirit” divorce should indeed be permitted (Howard 153). This points to the fact that Milton believed divorce must not only be permitted on the grounds of such things as adultery or abuse, but rather for reasons that imply incompatibility between the couple.

Milton goes on in his work to more explicitly express the need for divorce for reasons of incompatibility. He says that because the law of God stated that woman was created as “*a meet help*” for man, divorce should also be permitted on the grounds that the woman is no longer curing her husband’s loneliness, and is instead causing greater agitation than if he were single (Howard 153). While this does not promote the rights of women in any way, it does again point to divorce for some kind of incongruity between the couple, rather than a physical marriage violation, such as abuse or adultery, which were considered the only true reasons for divorce. Milton also states that the “indisposition, unfitness, or contrariety of mind arising from a nature unchangeable” can even go as far as to “hinder the main benefits of conjugal society, which are solace and peace,” and are consequently greater reasons for divorce than “natural frigidity” (Howard 107). This text is a key passage in emphasizing Milton’s call for what is referred to today as “” divorce. Here he claims that essentially any type of incompatibility, whether it be “indisposition, unfitness, or contrariety of mind,” if the nature of such incompatibilities are unchangeable, no one is technically at fault, but divorce should still be permitted.

Milton later explains that all God's laws depend on the greater idea of charity, and thus, God would not create any law that would forcibly bind two people into a life of misery, even if that misery simply stems from irreconcilable differences between the husband and wife. This, then, gives way to his proposition of divorce based solely on the incompatible nature of the couple; a divorce in which neither the husband nor wife are explicitly at fault for the failed marriage.

The very idea of divorce for reasons of natural incompatibility was indeed a progressive idea set forth in Milton's divorce work. Not only was divorce forbidden for reasons of irreconcilable differences in England during the 1640s, but it was also forbidden for almost every other reason save that of adultery. In some other parts of Europe, divorce was slowly becoming more acceptable thanks to the Protestant Reformation, but this slow transformation had yet to reach England due to England's strict canon law (Couch 576). It was not until 1857 that English Parliament even passed a divorce law that removed control from ecclesiastical courts, but this law still did not go as far as to permit "no-fault divorce". As late as 1969, England finally adopted its Divorce Reform Act, which stated "the sole ground for which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably" (Couch 576). These same types of laws have since become more global, and have proven Milton's work to be revolutionary in a few facets of contemporary divorce law.

While Milton's divorce work was moderately progressive in its own right, both *The Doctrine and Discipline of Divorce* and *Tetrachordon* failed to protect the rights of women, or promote equality in divorce. When one considers various passages from

Milton's first and second editions of *The Doctrine and Discipline of Divorce* as well as *Tetrachordon*, it becomes clear that Milton did not extensively consider gender equality or the rights of women.

### *1.2 Gender in Milton's First Edition of The Doctrine and Discipline of Divorce*

In Book One of *The Doctrine and Discipline of Divorce* there are reasons to believe that Milton may have considered equitable divorce, but these reasons are few. One cause for believing both men and women might have been addressed in Milton's divorce work was the full title in and of itself. While many refer to his work as *The Doctrine and Discipline of Divorce*, or even more simply as Milton's divorce tracts, the full title of his work is *The Doctrine and Discipline of Divorce Restored to the good of both Sexes, From the bondage of Canon Law, and other mistakes, to Christian freedom, guided by the Rule of Charity. Wherein also many places of Scripture have recovered their long-lost meaning. Seasonable to be now thought on in the Reformation intended* (Howard 39). Because Milton seems to include women in his work as early as the title in using "*to the good of both Sexes*," readers might falsely believe that this sense of equality will continue throughout the rest of his work.

Another reason to presume that Book One of Milton's divorce tracts promotes impartial family law is due to his occasional use of inclusive pronouns. In a few places Milton alludes to the idea that both the man and woman are responsible for the other's overall happiness in a marriage, and that when either fail to ensure the happiness of the

other, divorce might be a solution. One example of such inclusiveness can be found when Milton expresses the misery of a marriage between two people who do not assure the happiness of one another,

... yet now, if any two be but once handed in the Church, and have tasted in any sort of the nuptial bed, let them find themselves never so mistaken in their dispositions through any error, concealment, or misadventure, that through their different tempers, thoughts, and constitutions, they can neither be to one another a remedy against loneliness, not live in any union or contentment all their days. (Howard 40-41).

In this passage Milton does not go as far as to specifically blame men for a joyless marriage, but he does not mention women at all either, which gives the passage an overall tone of equality. It is the use of pronouns “they,” “them,” and “their” here that might cause readers to feel as though the blame for incompatibility is not solely on the female in the relationship. Examples such as these, while rather weak, do provide some evidence that Milton’s work pertained also to women in family law. However, this kind of text is consistently overshadowed by the strong presence of gender bias in his work, and because of this gender bias it becomes difficult to discern the text in which Milton promotes gender equality. Critics that contend Milton’s work was revolutionary in terms of gender, then, may have relied too heavily on the obvious, but scarce, evidence supporting such a belief.

Book One of *The Doctrine and Discipline of Divorce* in many ways fails to provide a sense of gender equality, as Milton argues primarily for men's ability to divorce. As early as Chapter I, Milton proves to rely on biblical text that fails to promote equity in marriage. The passage that he refers to is Deuteronomy 24.1, which states, "When a man hath tak'n a wife and married her, and it come to passé that she find no favour in his eyes, because he hath found some uncleanness in her, let him write her a bill of divorcement . . . and send her out of his house" (Howard 107-08). Due to the early placement of this text within the treatise, and because Milton bases many parts of his argument on this biblical passage, it becomes a type of foreshadowing of the female inferiority seen throughout the rest of his work. Thus, it comes to no surprise to find in Milton's later, revised edition of *The Doctrine and Discipline of Divorce*, that he again uses this passage to discount women in divorce. In Chapter VIII he asserts that the intent of God's law "undoubtedly was this: that if any good and peaceable man should discover some helpless disagreement or dislike either of mind or body whereby he cannot cheerfully perform the duty of a husband . . . he might dismiss her whom he could not tolerably and so not consciously retain" (Howard 153). As Milton interprets this text later in his divorce tracts, women remain in an unfavorable light. In contrast, "any good and peaceable man" had the ability to divorce his wife simply because he of his dislike for her. Therefore, Deuteronomy, as Milton uses it, clearly sets up a gender hierarchy that can be found throughout his work, and ultimately this Bible passage in itself becomes a reason to refute gender equality.

Milton seldom mentions women in the latter portions of *The Doctrine and Discipline of Divorce*, which alone can act as evidence that Milton did not promote

equitable rights; however, when he does mention women, it is almost always as inferior to men. In fact, the way in which Milton refers to females within his text almost always suggests that he views them as male possessions. He states that God's "chiefe end was of creating women to be joined to with man," because it was not good "*that man should be alone*" (Howard 109). Women, and marriage, were thus implemented as a prevention "of loneliness to the mind and spirit of man" (Howard 109-10). Milton, here, mentions only that women were created for the betterment of men, but fails to convey any notion that both men and women work complementary within a marriage, or furthermore, that men were created as companions to women.

Finally, Milton lowers the status of women even further, suggesting that not only are they a possession within marriage, but that women are also something subhuman. It becomes increasingly clear that Milton does not wish to imply any kind of impartial divorce law especially in his various depictions of women that can be found in Book One of *The Doctrine and Discipline of Divorce*. In Chapter III Milton characterizes a woman as a "virgin" hiding "unliveliness and natural sloth which is really unfit for conversation" (Howard 112). Later he goes as far as to call women "an uncomplying discord of nature" or moreover, "an image of earth and fleam" (Howard 116). However, the dehumanizing of women does not end there. Milton again refers to women in this way when he says, "As by physic we learn in menstruous bodies, where nature's current hath been stopped, that the suffocation and upward forcing of some lower part affects the head and inward sense with dotage and idle fancies" (Howard 134). At this point Milton reduces his female counterparts to nothing more than earth and bodily fluids. He depicts them as inhuman, and thus far inferior to men who are never referred to in this way. Asserting

that women are less human than men creates a very clear depiction of gender inequality, and this inferiority gives Milton reason not to extend divorce rights to women.

### *1.3 Gender in Milton's Second Edition of The Doctrine and Discipline of Divorce*

In Book Two of *The Doctrine and Discipline of Divorce*, there are again few reasons to believe that Milton may have been concerned for both parties within a marriage. However, like his first edition of his treatise on divorce, these few evidentiary passages that lead to theories of equity can be discounted by the overwhelming amount of text explicitly referring to the inferiority of women. Regardless, though, critics that make the assertion that Milton was an advocate for equitable divorce rely on these few passages to prove their claims.

Within Chapter XVII of Milton's second book of *The Doctrine and Discipline of Divorce*, he again uses some inclusive phrases, and consequentially does not point directly to either gender. In this section Milton states that "marriage was not ordained only for copulation, but for mutual help and comfort of life," and that the true nature of the Savior's commands lies in charity (Howard 172). Thus, he goes on to say, "we should so be good to others as that we be not cruel to ourselves" (Howard 172). Passages like these do not evoke specific gender biases or gender hierarchies, and therefore, they create the notion of equality. Rather than making the female party inferior to the male, here Milton states that marriage was, in general, created for "comfort of life" and not just the man's life.

Another section of Milton's second book of divorce tracts that calls to mind notions of fair treatment in the marriage and divorce process can be found in Chapter XXII. It is in this chapter that Milton says, "with the weight of the whole [divorce] law to boot, flat against the liberty and essence of the Gospel," there is nothing "available either to the sanctity of marriage, the good of husband, wife, or children, nothing profitable either to church or commonwealth," but, rather, that divorce is only "hurtful and pernicious in all these respects" (Howard 191). Although in this section Milton is, again, not specifically pointing to the sole betterment of women, he is including them within the larger group that Milton wishes to benefit. Here he is saying that not only will the ill effects of an incompatible marriage inevitably harm the husband, but women, children, and the community at large will also be adversely affected. Milton's inclusion, then, of women in the same context as men can be interpreted as reason for believing he may have considered unbiased rights between both genders.

Although there exist some sections within Book Two of *The Doctrine and Discipline of Divorce* that might allow readers to see Milton as unbiased toward gender, these sections are so few that they scarce prove that Milton's intentions were to promote gender equality in divorce law. By and large, this particular body of text works to the detriment of women, rather than to their benefit. One of the revisions made to Milton's first edition of *The Doctrine and Discipline of Divorce* that can be found in his second book on divorce is the further inclusion of women, but this addition does not stand to be one that is positive. While his direct use of feminine terms still remains infrequent, he does devote more time to the issues of gender, which can be found in various places.

Furthermore, the adjustments made in Chapter XV cause that particular section to become almost entirely about women in marriage and divorce.

In Book One of Milton's *The Doctrine and Discipline of Divorce*, he mentions early in Chapter I the idea of divorce due to incompatibility, and does not mention any specificity in gender. Here he says,

... indisposition, unfitness, or contrariety of mind, arising from a cause in nature unchangeable, hindering, and ever likely to hinder the main benefits of conjugal society, which are solace and peace is greater reason of divorce than natural frigidity, especially if there be no children, and that there be mutual consent. (Howard 107)

This is one of the main passages critics, such as Harvey Couch, refer to in their argument that Milton is inclusive of both genders in his desire for divorce, which can be understandable due to his use of such phrases as "mutual consent" and his lack of gender specific words. This particular passage happens to be Milton's interpretation of Deuteronomy 24.1; however, his explanation of the very same Bible passage found in Book Two negates the idea that his intentions in his first edition were truly that of equity.

In Milton's second book, his interpretation of Deuteronomy 24.1 differs remarkably from that of his first book. Unlike his first interpretation, which might give critics reason to believe he was promoting equality of divorce rights, his second interpretation is quite clearly establishes a sense of gender inequality. He states

Moses Deuteronomy 24.1 established a grave and prudent law, full of moral equity, full of due consideration towards nature, that cannot be resisted, a law consenting with the laws of wisest man and civilest nations; that when a man hath married a wife, if it come to pass he cannot love her by reason of some displeasing natural quality or unfitness in her, let him write her a bill of divorce. The intent of which law undoubtedly was this: that if any good and peaceable man should discover some helpless disagreement or dislike either of mind or body, whereby he could not cheerfully perform the duty of a husband without the perpetual dissembling of offence and disturbance to his spirit ... he might dismiss her whom he could not tolerably and so not conscionably retain. (Howard 153)

Based on Milton's initial interpretation of Deuteronomy, it can be understood why some readers would view him as supportive of equal divorce opportunities for both men and women. However, in this passage he makes it very clear that he feels it is the man's place to dismiss the woman in a marriage, and that this is not something women should have the right to do. In this reinterpretation of Deuteronomy, Milton very clearly specifies that if the husband is not happy he should in fact be able to dismiss his wife. However, this interpretation, unlike the interpretation in his first edition of *The Doctrine and Discipline of Divorce*, does not imply the notion of equal opportunity for both genders. When Milton explains Deuteronomy here, he leaves out the crucial word "mutual" found in Book One, but then also goes on to specifically mention divorce as a man's right. He

does not, however, imply that women might also have the right to divorce in this passage, and thus it becomes clear that his interpretation of Deuteronomy does not truly act as a way of calling for equality in divorce laws.

In Milton's attempt to change the laws concerning divorce through the persuasion of parliament, one of his main tactics is to refer to biblical passages and explain their relevance to his argument. However, the passages he employs consistently reinforce social hierarchies and policies that maintain the inferiority of women. One of the many passages he recalls is that of Proverbs 30.21-23. In referencing this biblical text in the context of divorce, Milton says that "this law the Spirit of God by the mouth of Solomom ... testifies to be a good and necessary law, by granting it that *a hated woman* (for so the Hebrew word signifies, rather than odious, though it come all to one) that *a hated woman, when she is married, is a thing that the Earth cannot bear*" (Howard 154). Like Milton does prior to this example, here he is depicting women as a "thing," and essentially subhuman. Furthermore, because this is intended to be Milton's appeal to parliament, it can be inferred that passages such as this would have been more significant to Milton and would have more pointedly portrayed his beliefs on the marriage rights of women.

Like previously mentioned, the explicit inclusion of women was one of the biggest changes made by Milton in his second edition of *The Doctrine and Discipline of Divorce*. This is especially apparent in Chapter XV, which is a section almost solely concerned with the question of gender. The opening to this chapter stating, "*divorce was not given for wives only, as Beza and Paraeus write,*" might initially lead readers to think that at this point Milton will simply advocate divorce for men as well as for women (Howard 167). However, this is not the angle he takes as he, instead, argues for the rights

of men to divorce and argues against the rights of women to divorce. In this section Milton makes a mockery of the idea that women might have the ability to request a legal separation when he says “to say divorce was granted for relief of wives rather than of husbands is but weakly conjectured, and is manifestly the extreme shift of a huddled exposition” (Howard 167). He goes on to explain this “extreme shift of a huddled exposition,” saying that it derived from the notion that a couple could not separate due to “hardness of heart,” and so in order to hide this “flaw” in divorce law, “divorce was permitted only for the help of wives” (Howard 168). However, he claims this to be “Palpably uxorious!” and asks, “Who can be ignorant that woman was created for man, and not man for woman?” (Howard 168). These passages clearly do not promote divorce for women, and they make Milton’s position on the matter of divorce quite clear. Not only does he say that granting women the right to divorce is “weakly conjectured,” but he also goes as far as to assert that women should not have this right because “woman was created for man,” and not vice versa. Milton’s insistence that women should not be granted divorce based on their inferiority to men in these passages further points to his lack of concern for gender equality in divorce. As the chapter continues, examples of male superiority in respect to marital law become increasingly obvious.

Another portion of Chapter XV in which Milton addresses the issue of gender in divorce demonstrates his feelings as to why only men should be granted the ability to divorce. Like many other sections of his divorce tracts, here Milton places sole blame on women for a failing marriage. Therefore, he feels as though it is only right that men should be permitted to divorce in that they are the ones within the marriage suffering at

the hands of women. In pointing out the kind of adversity men are forced to undergo during a marriage Milton writes,

What an injury is it after wedlock not to be beloved? what to be slighted?  
 what to be contended with in point of house-rule who shall be the head;  
 not for any parity of wisdom, for that were something reasonable, but out  
 of a female pride? *I suffer not, saith St. Paul, the woman to usurp authority  
 over the man.* (Howard 168)

Milton, here, is explaining that men should not have to suffer a marriage in which wives compete “out of female pride” to be the head of the household. In saying this, he asserts that men should have the ability to divorce when women contest male authority. He, then, makes this argument concrete by referencing St. Paul, who says that he will not be forced to suffer female authority. The passage completely negates the idea that men and women should be considered companions within a marriage. Men are, instead, considered so superior, that even when a woman jeopardizes male dominance, men should be granted permission to end the marriage. Furthermore, the ability for women to divorce their husbands for abuses of power, or for any other reason, is never mentioned in this passage. Thus, it is clear that Milton does not consider equitable divorce because of his assertion that women should not have power in a marriage. The male dominated relationship Milton promotes in these passages would ultimately grant divorce only to the husbands.

#### 1.4 Gender in Milton's *Tetrachordon*

John Milton's later divorce work, *Tetrachordon*, like *The Doctrine and Discipline of Divorce* also fails to promote equitable family law. In this text, Milton focuses solely on interpreting biblical text in order to convince parliament of his position on divorce. However, unlike *The Doctrine and Discipline of Divorce*, *Tetrachordon* promotes virtually no evidence of gender equality in divorce. This is likely due to the text Milton chooses to interpret, but nonetheless, any support of women's rights in marital affairs is simply not exhibited. Instead, gender biases are consistently conveyed throughout *Tetrachordon*.

*Tetrachordon* is broken up into three different sections, each discussing different passages of the Bible that concern divorce. Milton begins by interpreting text from Genesis, specifically Genesis 1.27. He states that some might doubt why the Bible says "In the Image of God created he him," and why it does not mention women as being created in God's image as well. Milton asserts that he does not doubt why it is written this way. He believes women are purposely excluded in this passage because if the image of God had "been equally common" to both men and women, there is no doubt the Bible would have instead said, "In the image of God created he them" (Howard 249). He goes on to explain his understanding of the Genesis 1.27 by referencing St. Paul's explanation of the text: "St. Paul ends the controversy, by explaining that the woman is not primarily and immediately the image of God, but in reference to the man. The head of the woman, saith he ... is the man: he the image and glory of God, she the glory of the man: he not

for her, but she for him” (Howard 249). Milton here is, again, using the biblical passages to emphasize his feelings of male superiority. His interpretation makes it seem as though the Bible very deliberately excludes females because of their inferiority to men. Milton is, thus using this passage in *Tetrachordon* as a way to emphasize the hierarchical differences of men and women, and to further assert males’ power over women in marriage, and consequently divorce.

Milton goes on to write about text found in Deuteronomy and the book of Matthew in his work, and these examples too, cannot be viewed as promoting the rights of both genders, but show clearly Milton’s impartiality. The passage from Deuteronomy in and of itself is gender biased, and Milton does not stray from this notion. He holds true to the idea that when a husband has “*found some uncleanness*” in his wife, he is free to “*write her a bill of divorcement, and give it in her hand, and send her out of his house*” (Howard 271). Finally in his discussion of Matthew, he sights Matthew 31, which states, “*It hath been said, whosoever put away his wife, let him give her a writing of Divorcement*” (Howard 290). Like the previously mentioned biblical texts, Milton places the blame of a failing marriage only on women. Furthermore, he only presents text that allows men to separate from women, but never women from men.

Although there are indeed examples of text found in Milton’s divorce work that can be said to be promoting the rights of equitable divorce laws, this evidence is too few to hold weight against the overwhelming indications that Milton was simply supporting the rights of men. It would seem then, those critics who believe that Milton was promoting the rights of both men and women in divorce were relying too heavily on evidence that did not truly encompass Milton’s intentions. When his text undergoes a

closer examination, the notion that he was not promoting women's marital rights, and that he granted this kind of permission only to men, ultimately refuses the notion of equitable family law.

## Chapter 2

### **Milton as a Product of His Time: Debate with Modern Critics**

In determining Milton's true devotion to gender equality, or inequality, one cannot simply look to his primary text and understand completely his feelings toward gender in divorce. To make an accurate judgment, it is crucial for any reader to also evaluate the points of fellow critics, even those taking the opposite stance on the question at hand. As was stated earlier, Milton's work has been subject to criticism since the time of its publication; however, in recent decades many more critics debating the issue of gender have appeared due to a new wave of "feminist" criticism.

During the 1970s a new notion of feminism began to emerge, and the term was defined as the breaking down of "dominant male patterns of thought" and "reconstructing female experience previously hidden or overlooked" (Green 6). With this recently developed definition in mind, critics began identifying Milton's work as either "feminist" or "anti-feminist" by way of examining his representation of the female nature within his works. As the feminist debate on Milton became more widespread, critics' theories began to vary drastically. While some saw Milton as representing women in a more favorable light, others took the opposite approach to his work. For example, *Paradise Lost* became one of Milton's most highly criticized pieces, and multiple publications outlining this work in light of modern feminist thought were released. Critics examined more closely Milton's portrayal of Eve in *Paradise Lost* who became a controversial character in terms of the overall debate on gender bias. One critic in particular, James Turner, who saw

Milton as depicting women in a more negative light stated that Eve in *Paradise Lost* was “conceived not as another person, a partner in a mutual conversation, endowed with equal responsibilities and rights, but as an accessory ideal, a being who is simultaneously ‘occasional’ and ‘inferior’ and the pinnacle of an amorous dream” (Turner 44). This, however, only accounts for one small part of the overall feminist debate, which ultimately underwent a series of changes since the advent of modern feminism in the 1970s.

As the debate on Milton’s regard to gender caught the attention of a greater number of literary critics, the question concerning his promotion of women’s rights began to appear. With the rights of women and equality in gender becoming more modern issues, critics became interested in examining Milton’s work to see if his text indeed addressed the notion of women’s rights. They began to look at Milton’s work in a new light, questioning if his text was extraordinarily progressive in his views of women, matching modern notions of equitable rights, or if he instead was oppressive of women, holding true to notions of male superiority. However, even this new question within the broader question of feminist criticism changed drastically as time progressed.

In 1970, critic John Halkett presented the idea that Milton was consistently progressive in terms of women’s rights citing such works as Milton’s divorce tracts and *Paradise Lost* (Martin 4). However, within the same decade, the opposite position was presented in a book entitled *Madwoman in the Attic* by Sandra Gilbert and Susan Gubar, which stated that Milton’s views on progressing the rights of women “were at best inconsistent” (Martin 4). By the 1980s, though, the prevailing opinion of Milton and women’s rights was again shifting. Critics Diane McColley and Joseph Wittreich helped

to establish the notion that Milton's work must not be merely looked at through a lens of modern history, but that the longer historical tradition must also be taken into consideration. These critics, then, essentially spearheaded what has become the most modern viewpoint on Milton regarding equal rights: a viewpoint that has become increasingly sensitized to the historical conditions of marriage, divorce, and the patriarchal domination that existed during the time in which Milton composed his work (Martin 4). This notion of Milton being simply a product of his time, and thus, not demeaning the rights of women has continued to persist and is one of the most prevailing theories in feminist criticism today.

While *Paradise Lost* may be the work that has been most widely examined in terms of the feminist criticism that states Milton is simply a product of his time, Milton's work on divorce often remains at the heart of this discussion. Furthermore, there have been many recent critics who have claimed that, in terms of gender equality, Milton's divorce tracts can be considered a product of his time due to religious, societal, or even language norms; however, this side of the debate can largely be proved inaccurate. In closely examining the religious factors of the mid-seventeenth century, Milton's own use of language, and finally, the work of his contemporaries, it can be proven that Milton's divorce tracts are in many ways not a just product of his time, and that they are thus, not progressive in terms of gender equality. By examining his work in a more comprehensive historical context, Milton can be viewed as unsupportive of the rights of women in regards to marriage, divorce, as well as protection following a divorce. This disregard for gender equality can again be examined in *The Doctrine and Discipline of Divorce* and *Tetrachordon*.

## 2.1 Exploration of Modern Feminist Critics' Views

Some critics, arguing that Milton presented progressive views towards the rights of women, state that his work was a reflection of a radical wing of the Puritan movement (Martin 6). One of these critics in particular is Catherine Gimelli Martin. In her critique, she quotes Michael Walzer's *The Revolution of the Saints* in order to contextualize the religious factors that might have played a role in Milton's work. According to Walzer,

Puritan writers insisted upon the inferiority of the female, but nevertheless recognized in her the potential saints ... Marriage between two saints would be a 'spiritual union' and not, in Milton's terms, 'the prescribed satisfaction of an irrational heat.' The new Puritan view of women, then, entailed a new view of marriage. Founded on a voluntary contract, it was directed in some fashion toward 'healthful pleasures and profitable commodities'. (Martin 6)

This emerging Puritan thought process became especially important in Milton's divorce tracts, according to Martin, in that the divorce tracts focus heavily on spiritual compatibility. However, other modern critics claim that factors beyond Milton's contemporary religious trends influenced his divorce tracts.

Gina Hausknecht, like Catherine Gimelli Martin, also concludes that Milton's work can be largely considered a product of his time, and thus, not oppressive of women.

In the article “The Gender of Civic Virtue,” Hausknecht states that the modern perception of John Milton’s *Doctrine and Discipline of Divorce* as opposed to women’s rights depends largely on readers’ current interpretation of specific gender related words used in Milton’s text. In her argument, she states that current critics’ views do not “adequately reflect Milton’s own use of gender categories” (Hausknecht 21). More specifically, she points out that there exists a modern misinterpretation of what Milton meant when stating something was “unmasculine”. Although we might now consider the opposition to masculinity as being “femininity,” Hausknecht asserts that this was not Milton’s intent. Instead, Milton’s contemporaries would have read “not masculine” as “boyish” or “bestial” rather than of, or pertaining to, women (Hausknecht 21). Hausknecht gives further explanation to Milton’s definition of “unmanly” as childish by citing another work of Milton’s, *Areopagitica*. In *Areopagitica* Milton states, “What advantage is it to be man over it is to be a boy at school, if we have only scapt the ferular, to come under the fescu of an *Imprimatur*?” (Hausknecht 22). It is believed by some that this quote from *Areopagitica* explicitly points to the fact that being unmanly meant acting immaturely, and not necessarily feminine, during Milton’s time. This exact belief is essentially Hausknecht’s argument, overall. In her article she implies that it is Milton’s definition of “unmasculine” that has caused current readers to misinterpret his text as being against the rights of women. Furthermore, she concludes that as Milton’s vocabulary is a product of his time, without an appropriate understanding of his historical context, critics’ views on Milton’s beliefs towards gender will be nothing more than a misinterpretation.

Milton critic Maria Magro, in a similar manner to the other modern feminist critics, also claims that Milton’s view of women is a reflection of his historical context.

In her work entitled “Milton’s Sexualized Woman and the Creation of a Gendered Public Sphere” Magro states that *The Doctrine and Discipline of Divorce* and *Tetrachordon* are simply the products of various misogynistic discourses, and the culturally charged rhetoric of individual liberty during Milton’s time (Magro 98). She states that marriage in the divorce tracts is framed within the context of the revolutionary turmoil that was present in the 1640s, and thus the reason Milton, too, engaged in political discourse. However, he did not do so in order to oppress women, but instead to keep intact individual freedoms. His text, though, appears to ignore the rights of women in large part due to the construction of sexuality during the seventeenth century. It was simply commonplace to view women as complementary to men in the household, if not inferior to their husbands altogether (Magro 99). She also makes the claim that, “Both the activities of women belonging to the radical sects and the energetic pamphlet debates of the seventeenth century on the ‘women question’ give the lie to this cultural assumption” (Magro 101). Therefore, Magro states, Milton is not presenting readers with an oppressive account towards women. Rather, the divorce tracts are instead presenting an accurate portrayal of the political upheaval taking place, as well as the commonly held views of women.

## *2.2 Contextual Invalidations*

### **The Mid-Seventeenth Century Puritan**

In Catherine Gimelli Martin's work she explains that Milton's text might have been a product of a radical Puritan movement that was taking place around the time the divorce tracts were written. However there are many problematic issues with this argument that stem from the true nature of the contemporary belief system held by those involved in the Puritan movement. In making the assertion that Milton's work was a reflection of Puritan beliefs, radical or not, it is first crucial to gain an understanding of what those beliefs truly were. Once those are considered, it is difficult to claim that the divorce tracts were a reflection of this particular belief system.

During the late sixteenth and early seventeenth century the Puritan ideology became one of the most influential facets of English society. Though the system of values and beliefs has been seen as complex and complicated, Puritanism was largely concerned with theology and ecclesiology (Morgan 9). Contemporary commentators defined puritans as a group struggling "for freedom of opinion," or a group with a strong desire "to order society according to extremely rigid and restrictive rules of conduct" (Morgan 12). It is important to note, however, that these rules of conduct derived directly from biblical text. William Bradshaw gave a telling definition of the term Puritanism and its concern with the Bible when he stated that Puritanism was a "devotion to Scripture and obedience to the ecclesiastical prescripts of the Word, including the equality of

congregations, the power and duty of civil magistrates to reform, and the restriction of the minister's role to purely spiritual functions" (Morgan 12). Bradshaw's definition thus proves that one of the main components of Puritan thought was commitment to the Bible and its teachings. The definition also goes on to say that Puritans desired the power to reform, but this desire was not to change the fundamental beliefs of the national church, rather a desire to change the way in which the church was structured.

Though Puritans were considered non-conformist in their opposition to the practices and, at times, the structures of the established church, it has been asserted that their beliefs were actually in line with the church's basic theology. At the turn of the century, when Archbishop Hutton was asked about the nonconformity of Puritanism, he replied saying although "he found the puritans very zealous, he did not understand them to differ substantially from the doctrines of the established church" (Morgan 12). Though there existed smaller groups with varying belief systems within the broader scope of Puritanism, each of the groups, even some of the most radical, overwhelmingly held true to the doctrine that founded the national church. It has been stated that Puritans only contested the theology of the established church with the rise of the Laudian-Arminian group (Morgan 12). However, historians have ultimately concluded that the characteristics most defining of Puritanism were "a dedication to preaching; an exceptional hatred of popery; an emphasis on the propagation of the Word, even above obedience to the rules of the church and, occasionally, to those of the state; a growing dedication to the sanctity of the Sabbath," among few others (Morgan 13). Once again, a strong emphasis is placed on the puritan dedication to Scripture, regardless of the sect in which an individual belonged. Therefore, although Puritans were considered

nonconformists for a number of reasons, theologically speaking they did not differ drastically from the national church. Furthermore, as the Church of England was staunchly against divorce, save in the most extreme circumstances of abuse or adultery as outlined in Scripture, Puritans too would have been against the dissolution of a marriage. It can be said, then, that it was not so much their basic religious beliefs that set Puritans apart, but rather the desire to change the functionality of the Church of England, which then made their movement radical politically.

With this theological understanding of Puritanism, and a greater knowledge of the Puritan devotion to the Bible, the claim that Milton's divorce tracts are not oppressive in terms of women, but that they are simply in line with a radical wing of the Puritan movement, becomes unsound. In some ways, it is true that Milton would have been in line with the emerging belief systems of Puritanism, primarily in his struggle "for freedom of opinion". Milton was interested in changing the functionality of the church, which can be seen not only in his divorce tracts, but also in his prior work such as *Of Reformation Touching Church Discipline in England*, *Of Prelatical Episcopacy*, and *The Reason of Church Government Urged against Prelaty*. However, Milton's commitment to Scripture varied drastically from Puritanism overall.

Though the Puritan movement was indeed revolutionary, even the most radical groups would have still held true to the basic theological beliefs of the church. That is, they would have strictly followed the teachings of the Bible, as was stated by Bradshaw, which includes such things as the restriction on divorce. Restriction on divorce, though, was essentially what Milton argued against, and thus would not have been in compliance with Scripture, the Church of England, and most importantly Puritan thought. Instead, his

divorce tracts are based almost exclusively with his contention with the single line in Genesis, “It is not good that man should be alone; I will make him an help meet for him” (*King James Bible* Gen. 2.18). It is clear that Milton, here is committed to specific biblical text, text that best promotes his arguments, but it is his disregard for other passages that leads one to view him as not like Puritans of his time. For example, the Bible also states, “whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery,” though Milton does not seem to devote himself to this text as it disproves God’s granting of divorce (*King James Bible* Matt. 5.32). Milton simply does not take into serious consideration the rest of Genesis, the Old Testament, and the Gospels, especially Christ’s strict prohibition of divorce; thus it cannot accurately be stated that his work was a reflection of Puritan thinking, as they would have followed the laws outlined in Scripture (Turner 36).

Though some Puritans may have sought “healthful pleasures and profitable commodities,” as Martin pointed out, there truly would have been few, if any, Puritan followers who would have supported Milton’s notion of “spiritual unions,” and marriage partners divorcing at their own free will (Martin 6). Likewise, in following biblical text, gender hierarchies would still have been present in the Puritan belief system, even if they were beginning to diminish. Therefore, stating Milton’s work was a reflection of a “radical wing of the Puritan movement,” as Catherine Martin argues, would not then lead one to conclude he was defending women’s rights in his divorce tracts. Instead, critics can only point to his work as being similar to the Puritan movement in that it called for freedom of opinion, reformation of the structure of the church, and was ultimately

politically unorthodox. However it did not conform to the theology of Puritanism, and because Milton's argument was almost entirely theologically based, he was not in line with the Puritan train of thought, nor was he promoting the betterment of women based on religion.

### **Definitions of "Masculinity"**

The argument that Milton's divorce work does not oppose women's rights based on differences in historical definitions of the term "masculinity" can also be refuted. Literary critic Gina Hausknecht asserts that it is simply the modern reader's preconceived notion of what "unmanly" means that has caused a somewhat misogynistic view of Milton's work. She states, "the oppositions Milton employs to construct a morally and ideologically freighted masculine ideal are not chiefly the familiar modern gender binary of male and female, and they do not preempt the possibility of women embodying that ideal" (Hausknecht 19). Thus, according to Hausknecht, Milton's use of masculine words, does not explicitly relate to the male gender, nor does it suggest opposition to femininity. She states that framed in the historical context of the divorce tracts, "unmanly" was more likely to mean childish, or bestial rather than feminine (Hausknecht 21). However, the major point of contention with her argument lies in her weak evidence.

Hausknecht's main source of evidence in her claim that Milton's use of "masculine" is not opposed to women is specific groups of text that suggest an alternative definition to the modern interpretation of the term. She says that one can contextualize "unmasculine" by examining Milton's statements throughout his works. For example, in

*Areopagitica* Milton says, “What advantage is it to be a man over it is to be a boy at school, if we have only scapt the ferular, to come under the fescu of an *Imprimatur*?” (Hausknecht 22). Thus, in this statement, Milton is associating manhood with maturity, rather than simply being related to the male gender. Furthermore, she claims that during Milton’s time, to be masculine meant much more than to be man, stating “masculinity is itself a virtue, characteristic not of biological sex but of merit” (Hausknecht 20).

Hausknecht goes on to prove that masculinity did not necessarily refer to men through the use of Milton’s divorce tracts. In his divorce work, when Milton does reference something as being the opposite of “masculine” he more frequently uses terms like “unmaskuline” and “unmanly” rather than “effeminate” (Hausknecht 22). Hausknecht also points out that only in *Eikonoklastes* does the word “feminine” ever appear in Milton’s prose, and thus, Milton almost never explicitly points to women. Therefore, according to Hausknecht, to say Milton opposes women in his work due to his use of “masculine” and “unmasculine” would be merely a modern misinterpretation of the word.

Though Hausknecht’s argument has merit in its own right, in regards to the divorce tracts, the evidence that points to Milton’s opposition of women is far too explicit to discount it as being a modern misinterpretation. While she makes the point that Milton almost never uses the word “feminine,” he does however, use of the words “woman” and “wife” negatively in his divorce tracts. His use of these words calls attention to a nature inherently against women that is undeniable regardless of his definition of masculinity. In *The Doctrine and Discipline of Divorce*, one particular example of text in which Milton includes women states, “when a man hath married a wife, if it come to pass that he cannot love her by reason of some displeasing natural quality or unfitness in her, let him

write her a bill of divorce” (Howard 153). If it cannot be confirmed in this passage that Milton is explicitly discussing females, he continues by saying

... if any good and peaceable man should discover some helpless disagreement or dislike either of mind or body whereby he cannot perform the duty of the husband ... rather than live uncomfortably and unhappily both to himself and to his wife ... he might dismiss her whom he could not tolerably and so not conscionably retain. (Howard 153)

Milton does not reference masculinity, but he does specifically mention the husband and wife binary in this passage, and thus, he alludes to both male and female genders.

Therefore, the claim that modern readers are simply misinterpreting Milton’s use of masculine nouns does not hold true when those nouns are paired with their feminine opposites, like that of “husband” and “wife”. In including “wife” Milton is referencing gender. He, furthermore, gives all divorce rights to the husband in this context, allowing “any good and peaceable man” to dismiss his wife, but not vice versa. The claim that Milton’s definition of masculinity does not make him opposed to women’s rights, then, can be refuted with this passage, as his mention of females is clear.

The biblical passages on which Milton’s divorce tracts are founded also explicitly point to gender, and because his work is essentially his own extended interpretation of these passages, he too references gender. Deuteronomy 24.1, one of the primary texts Milton refers to, states, “When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her:

then let him write her a bill of divorcement, and give it in her hand, and send her out of his house” (*King James Bible* Deut. 24. 1). This is in itself presenting women in an unfavorable light. If Milton were to, in fact, avoid the gender binary as suggested by Hausknecht, his interpretation would stray from repetitions of such words as “wife” and any feminine pronouns. However, this is not the case as Milton interprets this passage to mean that “when a man hath married a wife, if it come to pass that he cannot love” he thereafter has the ability to “write her a bill of divorce” (Howard 153). Furthermore, he says this biblical text is simply “a good and necessary law, by granting it that a hated woman, when she is married is a thing that the Earth cannot bear. What follows then but the charitable law must remedy what nature cannot undergo?” (Howard 154). There is no specific mention of masculinity in Milton’s interpretation of Deuteronomy; however, it is obvious that his interpretation involves women specifically, and when he does mention women, they are cast in a negative light. The tone of degradation found in these examples can be found through the tracts entirety, as Milton continues to explicitly address women, regardless of Hausknecht’s claim. Therefore, while Milton may not mention “effeminacy” directly in his divorce work, his constant mention of strictly feminine words creates implications of female opposition.

### **A Society of Male Superiority**

Finally, the popular claim that Milton himself was not in actuality opposed to the rights of women, but that his references to women were merely the manifestation of his contemporary gender biases can also be disputed, especially when looking into the work

of his contemporary authors. Though this particular viewpoint on Milton's work is one that has recently emerged, and is thus a modern critique of his work, an analysis of publications produced in mid-seventeenth century England by Milton's contemporaries serves well as evidence against this belief. One work in particular that disproves the argument that Milton's gender views were only a product of his time was a pamphlet published in response to Milton's divorce tracts entitled *An Answer to a Book, Intituled The Doctrine and Discipline of Divorce, or, A Plea for Ladies and Gentlewomen, and all other Married Women against Divorce (An Answer to a Book)*. While an anonymous author published this work, its overall message can be looked at as a representation of a view of women in contrast to what Milton presents.

*An Answer to a Book*, published in 1644, just a year after Milton's divorce tracts, presents readers with a more favorable depiction of women despite the idea that it was more commonplace to label women as inferior to men during this time period. The pamphlet, however, proves that respectful views of women did exist, and thus, if Milton were truly promoting equitable divorce laws, he would have been more inclined to represent women as they were in *An Answer to a Book*. It is not only the pamphlet's use of specific equitable terminology that one can see a more positive perspective of women, but this kind of viewpoint can also be found in some of *An Answer to a Book's* arguments against Milton's divorce tracts that ultimately seem to protect the best interests of women. During this time period, it was often the case that when a husband left his wife and family, the children essentially became fatherless. Women with children who were left without a husband were often stigmatized as "bastard bearers" and whores (Mendelson 148). Women were also frequently left without a dower in the event of a

divorce, which would largely leave them unable to provide for themselves.

Understanding this kind of devastating social punishment for women, the anonymous responder to Milton says, “divorce from the bond of matrimony it self . . . makes children Bastards and bereaves the woman of her dower” (Howard 406). In Milton’s work, he does not reference the financial struggle women are likely to face when they are left without a dower. He only desires the attainment of divorce, and he does not concern himself with the protection of women following a divorce.

This is not the only place in *An Answer to a Book* that seems to protect the interests of women, however. Again, the anonymous author acknowledges the superiority of men in society and the consequences of their superiority in a divorce for women. Therefore, it is also stated in the response to the divorce tracts that given the freedom to divorce, men were likely to

... pretend causes of divorce when there is none; and make quarrels and live despondently with his Wife, to the end he might have pretence to put her away: who see not how many thousands of lustfull and libidinous men would be parting for their Wives every week and marrying others; and upon this, who should keep the children of these divorcers which sometimes they would leave in their Wives bellies? how shall they come by their Portions, of whom, or where? and how shall the Wife be endowed of her husband’s estate? Nay, commonly, to what reproach would the woman be left to, as being one left who was not fit for any ones company? and so who would venture upon her againe. (Howard 410)

Not only does this passage point out the devastating effects of divorce for a female, but it is also being used to lessen the power of men within a marriage. This is in complete opposition to Milton's work in that he consistently presents males as power bearing, superior individuals in a marriage. The author in *An Answer to a Book* here is pointing out the flaws in men, saying that given the opportunity to end a marriage, men will be tempted to "pretend causes of divorce," in order to act in ways that are "lustfull and libidinous." He is showing their weakness in a marriage, which essentially degrades them as lesser than women.

This passage also acts as a way to point to all of the issues females would likely face if Milton would have been successful in his demands for no-fault divorce. However, these kinds of precautions are never stated or addressed in the divorce tracts, and thus, it becomes hard to view Milton as a true protector of the rights of women. Instead, Milton relies only on ending the unhappiness felt in a failed marriage: "How miserably do we defraud our selves of that comfortable portion which God gives us, but striving vainly to glue an error together ... God therein *hath called us to peace*, and not to *bondage* ... *he who hates, let him divorce*" (Howard 117-18). However, he does not continue in explaining how to ensure happiness if a divorce is in fact granted, especially for women who face a much bleaker outcome than men. In calling attention to these expected outcomes of divorce for women, it is clear that the author of *An Answer to a Book* is more considerate of the female perspective in the event of marital separation.

While Milton's biblical references often come at the expense of women's equality in his divorce tracts, his responder takes the opposite stance and presents his audience

with passages from the Bible that truly benefit women. Some of the passages that are quoted are Ephesians 5.28-29, which say, “So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church” (*King James Bible* Eph. 5.28-29). The author of *An Answer to a Book* then goes on to interpret the passage saying, “If the Husband ought to love his Wife, as Christ does his Church, then ought not a man to put away his wife for weakness of nature contrariety or indisposition of minde. But the first is true, *Ergo* the latter” (Howard 408). This biblical passage expresses clearly the love and respect a husband should have for a wife, and the author interprets it in this way. These types of passages that call for husbands to respect their wives, though, are not referenced in Milton’s work. Instead he quotes Saint Paul, who said “I suffer not . . . the woman to usurp authority over the man” (Howard 168). Milton himself also interprets Genesis in a way that negatively portrays females in a relationship when he says, “Who can be ignorant that woman was created for man, and not man for woman” (Howard 168). Unlike the author of *An Answer to a Book*, Milton does not call on the equality that should be shared within a marriage. Rather, he consistently references the Bible in ways that create a gender hierarchy within a marriage. Furthermore, Milton’s contemporary is pointing to the equality that can truly be found within the Bible in his references, while text such as Ephesians 5.28-29 are largely missing from the divorce tracts.

In order to attain divorce, one of the main passages Milton references in his divorce tracts is Deuteronomy 24.1, which states “*When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, let him write her a bill of divorcement, and give it in her*

*hand, and send her out of his house*” (Howard 108). He interprets this text as essentially allowing divorce on grounds of incompatibility. In light of this passage, Milton says the law of God “*permitted divorce for the help of human weakness,*” and therefore, “*indisposition, unfitness, or contrariety of mind*” become reasons for separation (Howard 108). While Milton does not interpret this biblical text in a way explicitly against women, he does not address the passage’s mention of women and their lack of ability to divorce in this context. However, in *An Answer to a Book*, this same passage is interpreted differently, but in contrast to Milton’s work, women are addressed. The author of *An Answer to a Book* contextualized Deuteronomy 24.1 and used it strictly for the betterment of women. He says that the law found in the biblical passage, “was only a law made in favour of the woman who was unjustly put away, and a sufferer” (Howard 427). However, Milton uses this biblical law as a rationale for leaving a wife who has simply become “unfavorable”.

Unlike Milton, the anonymous responder to his divorce tracts addresses the character and integrity of women in a positive way. This is quite possibly one of the most significant points against the idea that women were only looked at as inferior during the mid-seventeenth century. Beyond Milton’s suggestion that “woman was created for man, and not man for woman,” he also makes women inferior to men by suggesting they are less than human. In one portion of *The Doctrine and Discipline of Divorce*, Milton describes women saying, “As by physic we learn in menstruous bodies, where nature’s current hath been stopped, that the suffocation and upward forcing of some lower part affects the head and inward sense with dotage and idle fancies” (Howard 134). Here, he characterizes women by their menstrual cycle, and ultimately belittles their intelligence.

In another portion of his divorce tracts, he goes as far as to say women are “an uncomplying discord of nature,” or, “an image of earth and fleam” (Howard 116). Again, Milton here is reducing women to characteristically inhuman. Furthermore, it is this reference to women as “earth and fleam” that the author of *An Answer to a Book* strongly disputes.

In *An Answer to a Book*, the author is, in fact, quite explicit in regards to the way women should be viewed. Refuting the words of Milton, the author says,

... for Women are usually more than earth or fleame, they have many times spirit enough to weare the Breeches, if they meet not with a rare Wit to order them. I wonder should you use such phrases; I know, nor heare any Maides or Women that are all earth and fleame, much less Images of earth and fleame: If there be any such, yet you need to take no thought for them, there are enough dull enough to own them; & for your self or any other who desires them. (Howard 435)

This kind of rebuttal to Milton’s negative portrayal of women can unquestionably be seen as defending women in ways that are not found in the divorce tracts. The author expresses that women are more than “earth and fleam,” like Milton suggests, saying they are also spirited. Furthermore, the author here seems to be mocking Milton for belittling women to such a great extent, saying things such as “I know, nor heare any Maides or Women that are all earth and fleame, much less Images of earth and fleame” (Howard 435). This comment even goes as far as to sarcastically insult Milton for his female

references. In the last portion of this passage, though, the author appears to directly insult Milton, implying that Milton desires a woman of “earth and fleam,” which as we can see in this passage is far from a compliment.

*Answer to a Book, Intituled The Doctrine and Discipline of Divorce, or, A Plea for Ladies and Gentlewomen, and all other Married Women against Divorce* was likely the most controversial of responses to Milton’s divorce tracts, but it nonetheless presents the idea that women were not consistently viewed as inferior. Therefore, it in many ways negates the idea that Milton spoke of women in *The Doctrine and Discipline of Divorce* simply due to the views of gender and sexuality in mid-seventeenth century England, as critic Maria Magro argues.

### Chapter 3

#### **Divorce for the Betterment of Both Genders: Accurate Seventeenth Century Outcomes of Divorce for Women**

In the late twentieth and early twenty-first centuries family law underwent a number of transitions, and it was during this time of change that one of the most beneficial innovations was introduced. Equalizing property allocations between spouses finally became part of divorce legislation, and the wage-earning spouse was no longer favored in the distribution of property. This proved to help women tremendously, who oftentimes did not earn a wage, and if they did, it was unlikely that their wages were as high as their husbands'. Furthermore, it became mandated that marital assets, or "any property that the spouses acquire individually or jointly during the course of marriage," were divided, in most cases equally, between husband and wife ("Divorce and Separation"). These acts ensured that wives, who were often at an extreme disadvantage in the past, would be protected following a divorce.

With these major changes in modern divorce legislation in mind, critics can again look at Milton's work to decipher if he, in fact, pursued the protection of both genders following a divorce. In order for him to be considered as prophetic as some claim in regards to divorce legislation, Milton would have needed to include passages that focused not only on gaining a legal, recognized, marital separation, but also passages that attempted to limit the devastating outcomes women were forced to endure following a divorce. Too often, readers assume that granting a woman the right to divorce in the mid-

seventeenth century is similar to granting a woman the same right in the twenty first century. Readers might look at divorce with a modern interpretation, seeing it as a human right, and for that reason, they might view divorce as inherently beneficial to women's liberties. However, without understanding the proper historical background of divorce for women, the true qualities of Milton's work that classify him as either supportive or unsupportive of gender equality in divorce cannot be fully grasped.

It has been seen throughout global history that the amendment to a law, or the creation of a law, does not implicitly change the nature of societal beliefs and behaviors. Therefore, if Milton had been successful in his attempts to change laws regarding divorce, the negative social stigma that was attached to women who divorced would have likely persisted. Much in the way the author of *An Answer to a Book* articulates the outcomes of a change in divorce law, women would be left as "not fit for any ones company" (Howard 410). While men, on the other hand, would have been, from that point on, free to divorce at their will for reasons of "incompatibility," or as stated in *An Answer to a Book*, free to "pretend causes of divorce when there is none" in order to part from their wives, inevitably leaving women in a less than desirable life condition (Howard 410).

In the mid-seventeenth century, the very idea of marriage was far more significant for a woman than a man. Marriage transformed every facet of a woman's life as they transformed from "maid" to "wife" (Mendelson 126). Women became emotionally and physically subject to their husbands upon marriage. Marriage also implied moving to a different social class. While at times this happened through becoming part of the husband's higher ranked family, the status of a women would change regardless of who

she married in that following her wedding she was seen as an adult simply because she was no longer single. Therefore, married women assumed greater respect as well as larger responsibilities in local power hierarchies (Mendelson 130).

With marriage bearing such great importance in a woman's life, the status of a single woman was not often one of admiration. Simply because a woman was not married, she was consequently viewed as in a lower class than she would have been if she was married, the exception to this being women of royalty. Single women, due to divorce or widowhood, were rarely considered independent in that the majority of single women relied on poor relief (Mendelson 166). This was not always the case, however, as some elite women would have been able to financially support themselves given their family status, but for the majority of women, poor relief became their only life choice. For women who were not born into an elite class and were divorced, poor relief became a huge source for survival due to the extremely limited work opportunities for women. Additionally, those jobs that were available paid women far less than that of their male counterparts (Mendelson 169). These outcomes undoubtedly presented women with reason not to pursue divorce. Furthermore, the relatively small number of wives who are documented as having appealed to the courts for marital separation, and only due to the most desperate cases, is telling of the way women felt about divorce. It was clearly not something that was socially accepted, but more importantly, it frequently left women without the ability to provide for themselves.

### *3.1 Famous Divorce Cases of the Mid-Seventeenth Century*

It might be wondered if Milton chose not to incorporate protective measures for women in his divorce laws simply due to an ignorance of the harsh circumstances women were forced to endure following a divorce. However, though the pleas for marital separation that came from women were relatively few, there would have been a number of divorce cases proposed by the elite that Milton would have been quite familiar with. These cases, being highly publicized, would have been revealing in terms of what the actual results of divorce entailed for women. This is because society's reactions were based largely on their religious views of divorce as well as their beliefs on women, which were deeply rooted within English society. Therefore, regardless of the social status of the parties involved in some of the divorce cases, religious and gender norms applied to all citizens, and thus, divorced women would have been judged in a similar way as the women in these scandalous cases.

Some of the most notorious seventeenth century separation cases would have been that of Frances Howard and her divorce from the Earl of Essex, the Lake-Roos affair, and the Castlehaven scandal. Each of these stories ended with the woman involved being forced to face undesirable circumstances that were based primarily on religion and social norms. Thus, alluding to the idea that other women of this time, regardless of social class, would have undergone some of the same results. This then, calls into question the level to which Milton was arguing for the benefit of both genders in his text. He would have been privy to the detrimental outcomes women faced in divorce, making

divorce inherently unbeneficial to the female party. Therefore, because Milton did argue for divorce, but did not go as far as to ensure protective measures for both genders, especially for women, he was not supporting of the gender equality associated with modern divorce laws.

### **Frances Howard and The Earl of Essex**

The case of Frances Howard was possibly the most renowned divorce case of seventeenth century England. In the year 1606, Frances Howard, daughter of the King's Lord Chamberlain, Thomas Howard, was married to Robert Devereux, Earl of Essex (Early Stuart Libels). It has been widely accepted that the marriage of the two young individuals was arranged in the hopes that long-standing political tension between the Howard and Essex families would subside (Curran 44). The fact that both Frances Howard and Robert Devereux were young when they married, and that the marriage was arranged, made feelings of discontent within their union very likely. Therefore, on May 17, 1613, Howard submitted a formal request to an assembly commission of churchmen and lawyers that asked the commissioners to annul her marriage. In her petition, she claimed that her husband, the Earl of Essex, "hath had, and hath power and ability of body to deal with other women, and to know them carnally," but that with her, the Earl could not "have the copulation in any sort which the married bed alloweth" (Early Stuart Libels). On the grounds of impotency, divorce was allowable by ecclesiastical law, and because Howard claimed her marriage was unconsummated, it was by all legal standards, not a marriage at all. While this in itself sparked court gossip to spread rapidly amongst

London newsmongers, it was Howard's supposed plan of marrying Robert Carr upon her divorce that truly created tension. In trying to remarry, Howard received an immense amount of negative criticism, and was looked at unfavorably by her society. The right to remarry, though, was one of the many marital freedoms Milton claimed to have been trying to attain in his divorce tracts. Therefore, Milton's call for remarriage following divorce may not have truly benefited women in terms of their standing in society, and without also attempting to gain some kind of protection for women, the divorce he promoted would have only harmed women. In this sense, then, he was not in line with modern divorce laws.

For most women in the position of Frances Howard, divorce would not have been an option, especially when her true intentions of remarriage were discovered. However, King James I looked favorably on the divorce because of his close friendship with Robert Carr, who was said to have been a personal favorite of the King for several years. Even with the King's approval though, the idea of divorce for the sake of incompatibility, and the desire to marry another, created several legal and moral concerns. In fact, a commission led by Archbishop of Canterbury, George Abbot, threatened to simply end the divorce hearings for Howard due to his ardent disagreement of the situation. By late July, though, King James finally interceded in the court proceedings and placed a number of archbishops on Howard's divorce commission that would sway the litigation in her favor. Therefore, by September 25, 1613 Howard was granted a nullity, and by December 26 of the same year Frances Howard and Robert Carr were married in an extravagant wedding.

Although the Howard-Carr marriage was strongly supported by the King, moralized outrage over the events spread rapidly throughout society. As one would assume though, the public's attacks were aimed at the immorality of Frances Howard, and the blame was not cast on either her first or second husband. The attacks on Howard included such things as whoredom, sexual insatiability, and even demonic witchcraft. One poem in particular that calls attention to the immorality of Frances Howard stated:

Letchery did consult with witcherye  
 how to procure frygiditye  
 upon this ground a course was found  
 to frame unto a nullatye  
 And gravitye assuming lenytye  
 gave strength to this impietye  
 hoping thereby a way to spye  
 to rise to further dignitye  
 But whats the end both foe and frend  
 cry shame on such austerytye  
 And booke and bell do dam to Hell  
 the Lord and Ladyes lecherye (Early Stuart Libels)

The poem makes references to Howard's use of "witcherye," or witchcraft, to ensure the impotence of her first husband Robert Devereux. Thus, as witchery was thought to have caused impotence, it was indirectly witchery that granted Howard the "nallatye," or

divorce. Furthermore, the poem goes on to cast the entire act in a shameful light, stating that the commissioners granted the divorce as an act of “impiety”. Had Howard and Robert Carr not been in such good favors with the King, the commission on divorce would have assuredly rejected the plea for separation, and thus, the poem suggests the commission was impious. Finally, because the separation was ultimately successful, the author of the poem says “both booke and bell,” or more simply “the Church” or “the Christian religion,” will damn Frances Howard and Robert Carr to hell. This last phrase calls attention to the deep-seated religious beliefs concerning divorce, and because this type of religious belief was so common throughout the majority of society, one can surmise that these feelings of contempt would have been attached to any divorce case. However, females would have continued to be cast in a much more negative light than the male parties involved in a separation.

Frances Howard ultimately earned the harmful titles such as whore or witch, as was seen in the poem concerning her divorce, not because she found a way to circumvent the law, but rather because she sought a nullity of her unsuccessful first marriage, which blatantly violated religious text and, more importantly, the patriarchal ideals of submissive femininity (Early Stuart Libels). Because she sought a divorce, and attained the separation, she violated social norms and was looked upon unfavorably. However, neither her first nor her second husband was looked at as quite as monstrous as Frances Howard, herself. After she achieved what Milton called for in his divorce tracts, she was thereafter portrayed as a type of social villain. Thus, Milton’s call to amend divorce laws would not have been beneficial to women, especially those who were not of royal blood, in terms of the way society viewed them. If Milton had been successful in his plea to

parliament, allowing divorce on the grounds of incompatibility and being permitted to legally remarry, women would have suffered the consequences of being socially outcast. It was the cultural norms of mid-seventeenth century England that created systematic violence in regards to the rights of women, not the laws themselves that would have caused problems. Thus, in order to consider Milton's divorce tracts supportive of both men and women, he would have had to go beyond simply attempting to change the nature of women's legal standing in divorce. He would have had to, instead, strive to transform the deeply rooted cultural norms that persisted when women sought to nullify a failing marriage by making them neither a "whore" nor a "witch" after a divorce, much in the way Frances Howard became viewed. Milton, though, does not offer this kind of persuasive rhetoric in his work, nor does he offer any kind of protective measures for women who might have been successful in attaining a legal marriage separation.

### **Lady Anne Lake and Lord Roos**

Another notorious divorce scandal that Milton would have been familiar with would have been the scandal surrounding Lady Mary Lake and her daughter Anne (Early Stuart Libels). This particular marital scandal arose as a consequence of the February 1616 marriage between Anne Lake and William Cecil, Lord Roos. Unfortunately, like many arranged and otherwise predetermined, marriages the union of Anne Lake and William Cecil was one that began adversely and remained in an unhappy state throughout its entirety. After an extensive quarrel between the married couple, Roos went abroad and it was suspected that he then had an affair with Frances Cecil, the Countess of Exeter and

young wife of his grandfather, Thomas Cecil, Earl of Exeter (Early Stuart Libels). Anne Lake and her mother charged Roos for this supposed affair, but the Earl of Exeter and Countess appealed to the King. Anne Lake, her mother, and brothers, were consequently convicted of defaming the Earl and Countess and were sent to the Tower with heavy fines. Anne was finally released from the Tower in June of 1619 after a confession of the crime, but the true nature of her guilt has not been thoroughly investigated. It may have been the case that she confessed only due to the harsh conditions of her punishment, not because she admitted to fabricating the story of her husband's affair. Nonetheless, the supposed crimes that surrounded her marriage vilified her, and she was thus seen in the same light as Frances Howard (Early Stuart Libels). Anne Lake inevitably gained criticism because as a female, she should not have disrespected the sanctity of marriage.

Once again, this marital scandal calls to mind the divorce work of John Milton. If incompatibility had become reason enough cause for divorce, it can be surmised that Anne Lake would have legally separated from William Cecil, but the welfare of her social status would not have been so assured. The result of Lake having charged her husband for an affair was extreme punishment for her and her family, even though adultery was in fact one of the only reasons for granting a divorce. If she had tried to separate for reasons not listed in the Bible, such as incompatibility as Milton argued, she would not have seen a better outcome. Regardless, though, because she went as far as to blatantly disparage the sanctity of marriage, and violated law based on Scripture, she was met with unfortunate consequences. Thus, had she been legally allowed to divorce, she would have separated from her husband but still would have been seen as a villain for her lack of respect for ecclesiastical law. Understanding this type of outcome, Milton should

have made the decision to include in his work rhetoric that might have caused society to look more favorably on women who divorced, thus granting them the social protections that needed.

### **Anne Stanley and The Earl of Castlehaven**

Another major marital scandal occurred in 1631, only a decade prior to Milton's divorce publications. This particular scandal was somewhat different from the others, but was similar in that it ultimately cast a negative light on the female. What was surprising, though, was that the male was convicted in the case, but the public outrage still targeted his wife, which was extremely telling of the ways in which society viewed gender differences in divorce. The scandal described here is known most commonly as the Castlehaven Scandal. On April 25, 1631 Mervin Touchet, 2<sup>nd</sup> Earl of Castlehaven, was tried for suspicion of arranging his wife, Anne Stanley, to be raped by a servant, Giles Broadway. The prosecution also contended that Castlehaven committed sodomy with one of his household manservants (Early Stuart Libels). Even after serious problems with the evidence against Castlehaven that were presented in court, he was found as being guilty of the crime and was executed on May 14, 1631.

Without any additional information, this narrative seems as though Mervin Touchet was believed by the public to have been guilty, and that he would have been scorned for his actions even outside of court. However, Cynthia Herrup has recently reinterpreted the case and has reconstructed the prosecution's interpretation of the Castlehaven's crimes as threats to the patriarchal order. This is remarkably different from

the previously held notion that the Castlehaven case was a king's attempt at enforcing much stricter codes of sexual morality. Furthermore, despite Castlehaven's guilty sentence, public sentiment still proved to be against his wife. One poem entitled "An Epitaffe on the Earl of Castlehaven Mervine Touchett. Set on his Tombe. After his beheadinge. 1631." was published in response to the scandal went as follows:

I neade noe Trophies to adorne my hearse  
 my wyffe, exalts my hornes in everie vearse:  
 and plaste them hath, soe fullie on my tombe  
 that for my arms, there is no vacant rome.  
 Who will take such a Countess to his bedd  
 that first gives hornes, and then cuts off his head:  
 Servants, a sonne, and a wyffe wich I did wedd,  
 have layde poore Mervine here without a headd. (Early Stuart)

This poem appears to be almost sympathetic to "poore Mervine," while portraying his wife in a less than favorable way, despite his apparent guilt. Moreover, it was a common metaphor for men who had been "cuckolded," or cheated on by their wives, to have horns. The poem makes reference to this metaphor, which implies Anne Stanley was an adulteress, when in reality it was said that she had been raped. Furthermore, Herrup, in interpreting the poem, is quoted saying that the poem "portrayed the Earl as helpless, not monstrous; the willful evil belonged to the Countess" (Early Stuart Libels). It seems shocking that this would have been a commonly held opinion on the matter, however it

again points to the cultural persecution of females in regards to failed, or problematic, marriages. It also calls attention to that lack of influence actual litigation has on the public, which again affirms the idea that regardless of if Milton's divorce tracts had been successful in what he pleaded for, a change in the law would not have changed the cultural context. The culture and negative views of women in divorce was not something that was addressed in Milton's work, and thus, he cannot truly be considered having been a defender of women's rights in the realm of family law.

Each of these three cases proves that law does not always change the hearts and minds of a society when the law is contrary to long-standing beliefs, especially when those beliefs are grounded in one's faith. They also call attention to those long-standing beliefs of female inferiority within marriage and divorce. Because each of the three scandals unfolded in a relatively close time span to when Milton produced his divorce work, it cannot be denied that he would have been well accustomed to the events that took place. Furthermore, he would have seen the culturally damaging effects divorce had on women. Therefore, in analyzing his work within its historical context and with these three marital scandals in mind, one cannot truly say that Milton's work was advocating equality of women's rights, as he completely neglected to incorporate protective measures for women in divorce. Given the historical context of the divorce tracts, what Milton argued for would have likely been only damaging to women. In order to truly view Milton's work as promoting the rights, and ultimately the benefit, of women in his literature, he would have had to include such things as protection for women following a divorce, or greater efforts to create a cultural transformation, not just a legal change.

Unfortunately these things were not included, and thus, Milton's work cannot be read as being supportive of equal rights in a modern sense, like some critics have claimed.

### *3.2 Conclusion*

One of the biggest arguments in current feminist criticism of John Milton's divorce tracts is that it should be read as supporting women when it is read with a consideration of its historical context. The arguments that support this have been made clear and are widely accepted. However, despite their convincing nature, they cannot be held as being completely accurate. Keeping Milton's particular time period in mind, as well as his culture, there are many reasons to refute the notion that he was in fact an advocate for the rights of women in regards to family law. Furthermore, it seems that modern feminist critics today can view him as being an author supportive of women's rights simply because of their own contemporary standards and biases. By today's standards, the right to divorce based on incompatibility would likely be labeled as a human right, something that should be afforded to all people. However, this kind of belief was so remarkably different in the time of Milton that critics should reconsider the very foundation of the reason they believe the divorce tracts to be favoring women. If one were to contextualize Milton's divorce work in a modern society, possibly one lacking proper divorce laws, it would be easy to consider this kind of work as advocating beneficial laws for women, but only because of current cultural standards. *The Doctrine and Discipline of Divorce* and *Tetrachordon* were not written in a time when a majority

accepted women's rights, and thus, to consider Milton ultimately supportive of women's welfare in divorce, he would have had to do much more than simply aim to amend marriage laws. John Milton would have had to change his culture, and given the poor reception of his divorce work, this too, was not the case.

## Chapter 4

### Conclusion: Success Within and Beyond Divorce Law

Although John Milton's divorce work ultimately does not strongly correspond to some of the most pressing issues in modern family law, mainly that of gender equality in divorce, to say he that he was not at all ahead of his time would discredit his work. After closely examining Milton's divorce tracts it does become apparent that Milton presents strong gender biases; however, the concepts relating to greater individuals liberties would have been rather ground breaking during his time. These concepts, though related only to marital law in Milton's divorce tracts, can be looked at in a more general sense, and can be related to modern forms of democracy, and other individual freedoms. Within Milton's divorce tracts, such current democratic rights as freedom of religion, the separation of church and state, and ultimately the freedom to choose one's own identity, can be found. However, in regards to the divorce he argued for, some of his ideas were so revolutionary that they were not put into practice until many centuries after his divorce pamphlets were first published.

The true reason for Milton's decision to publish pamphlets on divorce remains up for debate; however, if the reason that he, himself, provided is true, the goal he was trying to accomplish by publishing his views on divorce were quite progressive. Nearly a decade after his divorce tracts were published Milton claimed in *Pro Populo Anglicano Defensio Secunda* that he wrote on that particular topic due to his concern for individual liberty. He stated,

When they [the bishops], having become a target for the weapons of all men, had at last fallen and troubled us no more, I directed my attention elsewhere, asking myself whether I could in any way advance the cause of true and substantial liberty, which must be sought not without, but within, and which is best achieved not by the sword, but by a life rightly undertaken and rightly conducted. Since, then I observed that there are, in all, three varieties of liberty without which civilized life is scarcely possible, namely ecclesiastical liberty, domestic and personal liberty, and civil liberty, and since I had written about the first, while I saw that the magistrate were vigorously attending to the third, I took as my province the remaining one, the second or domestic kind. (Couch 571)

Though the divorce tracts, themselves, seem to explicitly promote divorce for men, in this explanation Milton claims that he was trying to achieve greater domestic freedoms, which may have very well been possible. In light of both *The Doctrine and Discipline of Divorce* and *Tetrachordon*, though, it would seem that he might not have been directing his call for domestic freedoms towards women. However, when reading this passage in a modern sense, without prior knowledge of Milton's gender bias, the ideas of domestic freedoms and his devotion to "the cause of true and substantial liberty" are commendable and progressive. Furthermore, because his beliefs regarding individual liberty as they are stated here resemble the basis for which modern democracies exist, Milton can be considered revolutionary.

While Milton's own life events during the time in which he composed the divorce tracts have called critics to question if the idea of domestic liberty was the sole reason for publishing the divorce tracts, other prose work Milton released within the same decade might help to prove Milton's own claim for having written these particular pamphlets. In the year 1641, for example, Milton published *Of Reformation Touching Church Discipline In England, Of Prelatical Episcopacy, and Animadversions* ("John Milton 400th"). Each of these works entered into the long-running debate concerning the legitimacy of ecclesiastical law, which Milton strongly opposes in each of these three works. During the following year, he continued in his pursuit of gaining greater individual freedoms as he published *The Reasons of Church Government Urged Against Prelaty*. In this particular work, Milton starts supporting the idea of independent congregations, which can be viewed as his call for individual freedom on an even greater level ("John Milton 400th"). In this he is moving closer to supporting the right for society to gain a greater sense of individual freedom and self-awareness through various religions. In 1644, after publishing his divorce tracts, he again pursues further human liberties in *Areopagitica: A Speech of Mr. John Milton for the liberty of unlicensed printing, to the Parliament of England*. Here, Milton argues for the right to publish works without censorship. *Aeropagitica*, then too called for individual liberty in that it essentially called for the right of freedom of speech. Though Milton may have written the divorce tracts as a response to his own life, each of these works can act as proof that he may have also written on divorce due to his interest in gaining individual liberty in mid-seventeenth century England.

Milton's call for individual liberties in the divorce tracts was in some ways ahead of his time; however the notion of divorce for incompatibility was indeed the most revolutionary idea that he presented. However, it took many years for England to finally fully acknowledge the legitimacy of Milton's point. When the divorce pamphlets were published in 1643, Milton had hoped that his work would spark some kind of legal conversation that might lead to changes in divorce legislation. Unfortunately for him, his divorce tracts were not widely acknowledged, and many dismissed them before they could really make any kind of an impact. The few responses his divorce pamphlets earned, though, were mostly negative, and stated that his work was condemnable. The closest thing to a positive response that Milton achieved during his own time was in 1649. In this year bishop Joseph Hall published a pamphlet that also considered the question of divorce (Couch 574). Hall saw divorce as justifiable in the case of adultery, but unlike the Church of England, Hall explained that the innocent party in the relationship should be permitted to remarry. He also extended this right to women, which was never something Milton did explicitly. Ultimately though, neither Hall's case nor Milton's were successful in making any headway with parliament, and their requests for change in divorce laws were largely ignored during the remainder of the seventeenth century.

It was not until as late as 1857 that England finally began making some reforms to their marital law system. During this year, parliament passed a divorce law that removed jurisdiction from ecclesiastical courts. Divorce was still only granted for the most extreme cases, and primarily for adultery, but removing ecclesiastical jurisdiction was still quite progressive (Couch 576). In 1969, over one hundred years after England's first

reform, the Divorce Reform Act was then passed. This law stated that, “the sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably” (Couch 576). Thus, divorce for reasons of incompatibility was finally accomplished, though centuries after Milton first presented the concept to Parliament.

This kind of divorce for reasons of incompatibility then spread throughout the world, and has essentially what has become “no-fault divorce” today. In the mid-1960s there was a sharp rise in divorce rates that existed primarily in industrialized countries, and thus, there began to be a call for more liberalized divorce laws (Glendon 149). Therefore, in the 1970s, some of Milton’s biggest arguments for divorce in his 1643 divorce tracts began to become a reality. Marriage quickly transformed, as it was no longer dissolvable only for reasons of serious infraction, and was now possible for lesser reasons such as incompatibility. The main characteristics of the new laws that were being put into place were the recognition or expansion of nonfault grounds for divorce as well as the acceptance or simplification of divorce by mutual consent (Glendon 149). These laws then gained widespread popularity, and began to be implemented throughout England, France, West Germany, Sweden and the United States.

Although some of Milton’s ideas in his divorce tracts did eventually become implemented into divorce legislation, it would still be too bold a statement to claim that his work was entirely predictive. This is because out of all of his ideas that have found their way into modern divorce legislation, none of them really involve the issue of gender equality. True, the idea of divorce for incompatibility has been implemented; however, if current legislation modeled laws entirely on Milton’s requests, women would not have

the right to divorce, and furthermore, they would likely have no protection, whether social or financial, following their separation. These rights for women have become such a crucial part of modern divorce law, that by neglecting entirely to implement them into a divorce treatise, the treatise can no longer be considered in line with modern divorce legislation. Thus, overall, the answer to whether or not Milton is “prophetic” in his divorce tracts can overwhelmingly be no. Instead, it might be more accurate to say that Milton’s ideas simply evolved gradually into the divorce laws of today. It is more likely that his arguments merely sparked the interests of other intellects throughout the centuries, where his initial ideas were then modified continuously until they became current divorce legislation. However, his ideas alone do not match modern divorce laws closely enough to state that he, himself, was predictive. Furthermore, it is John Milton’s overall neglect for gender equality in divorce that has proven, and solidified, this point.

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## Education

B.A., English, 2013, The Pennsylvania State University, University Park, PA

## Honors and Awards

**Schreyer Honors College Scholar** – *Honors in English* Fall 2011

- Maintained superior academic achievements.
- Completed 32 honors credits, with a focus on Civil Rights and civil discourse.
- Composed an honors thesis that integrated both a discipline in English and legal studies.

**The Paterno Liberal Arts Undergraduate Fellows Program** Fall 2010

- Completed courses with focuses on ethics, service, and leadership; excellence in communication; and international and intercultural awareness.
- Completed of a 24-credit Business and the Liberal Arts minor.
- Completed of 35 honors credits.

**The President's Freshman Award** Spring 2011

- Awarded for earning a 4.00 GPA during the fall semester of 2010

**The President Sparks Award** Spring 2012

- Awarded for completing over 36 Penn State credits while maintaining a 4.00 GPA.

**The Even Pugh Scholar Award** Spring 2012

- Awarded for in the upper 0.5 percent of my graduating class
- Maintaining a GPA of 3.98 or above

**The National Society of Leadership and Success (NSLS)** Fall 2012

- Completed leadership training.
- Participated in success networking team meetings.
- Attended multiple leadership speaker events.

**The Honor Society of Phi Kappa Phi** Spring 2013

- Selected due to the academic achievement of being in the top 10 percent of my graduating class.