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THE FAMILY, SEX AND MARRIAGE

In England 1500–1800

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3. DEFINITION OF TERMS

In order to understand what follows, it is first necessary to define with some care what is meant by 'family', 'household', 'lineage', 'kin', 'marriage' and 'divorce'. On close inspection these apparently simple words turn out to have complicated and ambiguous meanings.

The word 'family' can be used to mean many things, from the conjugal pair to the 'family of man', and it is therefore imperative to begin with a clear definition of what the word will mean in this book. Here it is taken as synonymous neither with 'household' nor with 'kin' – persons related by blood or marriage. It is taken to mean those members of the same kin who live together under one roof.

A household consists of all persons living under one roof. Most households included non-kin inmates, sojourners, boarders or lodgers, occupying rooms vacated by children or kin, as well as indentured apprentices and resident servants, employed either for domestic work about the house or as an additional resident labour force for the fields or the shop. This composite group was confusingly known as a 'family' in the sixteenth and seventeenth centuries. It was because of their legal and moral subordination to the head of the household that no one, not even the Levellers, suggested that the electoral franchise should be extended to children or servants or women. They were not free persons.

In a society almost entirely without a police force, the household was a most valuable institution for social control at the village level. It helped to keep in check potentially the most unruly element in any society, the floating mass of young unmarried males; and it provided the basic unit for taxation. No wonder both Church and state looked on marriage with approval, and the sixteenth-century moral theologians spoke eulogistically about it as 'appointed by God Himself to be the fountain and seminary of all other sorts and kinds of life in the Commonwealth and the Church'.

In the Early Modern period, living-in servants were not the rarity that they are today, but a normal component of all but the poorest households. From the time of the first censuses in the early sixteenth century to the mid-nineteenth century, about one third or more of all households contained living-in servants.

The lineage are relatives by blood or marriage, dead, living, and

yet to be born, who collectively form a 'house'. The kin are those members of the lineage who are currently alive and who by virtue of the relationship are recognized to have special claims to loyalty, obedience or support. It was the relation of the individual to his lineage which provided a man of the upper classes in a traditional society with his identity, without which he was a mere atom floating in a void of social space.

As this traditional society eroded, however, under the pressures of church, state, and a market economy, different values came to the fore. These included the interest of the state in obtaining efficient and honest servants who were best fitted for their tasks; the interest of the individual in obtaining freedom to maximize his economic gains and freedom to pursue his personal goals; and the claims and interests of intermediate organizations, such as churches and professional groups. These new values undermined allegiance by the kin, and the result was a crisis of confidence among the aristocracy.

As one proceeds further away from the Highland zone and closer to London, and further down the social scale through gentry, bourgeoisie, peasants and artisans, the concept of kinship carried less and less of the baggage of ideological commitment to 'honour' and 'faithfulness', etc., to which most great magnates and their followers paid more than mere lip-service. In these less exalted circles, lineage meant little, and kinship was more an association for the exchange of mutual economic benefits than a prime focus of emotional commitment. Further down still, among the propertyless, the community of friends and neighbours was probably more important in both respects, especially in the urban environment.

In the Early Modern period, marriage was an engagement which could be undertaken in a bewildering variety of ways, and the mere definition of it is fraught with difficulties. Up to the eleventh century, casual polygamy appears to have been general, with easy divorce and much concubinage. In the early middle ages all that marriage implied in the eyes of the laity seems to have been a private contract between two families concerning property exchange, which also provided some financial protection to the bride in case of the death of her husband or desertion or divorce by him. For those without property, it was a private contract between two individuals, enforced by the community sense of what was right. A church ceremony was an expensive and unnecessary luxury, especially since divorce by mutual consent followed by remarriage was still widely practised.

It was not until the thirteenth century that the Church at last managed to take over control of marriage law, to assert at least the principle of monogamous indissoluble marriage, to define and prohibit incest, to punish fornication and adultery, and to get bastards legally excluded from property inheritance.

Although by the sixteenth century marriage was fairly well defined, before 1754 there were still numerous ways of entering into it. For persons of property it involved a series of distinct steps. The first was a written legal contract between the parents concerning the financial arrangements. The second was the spousals (also called a contract), the formal exchange, usually before witnesses, of oral promises. The third step was the public proclamation of banns in church, three times, the purpose of which was to allow claims of pre-contract to be heard (by the seventeenth century nearly all the well-to-do evaded this step by obtaining a licence). The fourth step was the wedding in church, in which mutual consent was publicly verified, and the union received the formal blessing of the Church. The fifth and final step was the sexual consummation.

But it cannot be emphasized too strongly that according to ecclesiastical law the spousals was as legally binding a contract as the church wedding, although to many laity it was no more than a conditional contract. Any sort of exchange of promises before witnesses which was followed by cohabitation was regarded in law as a valid marriage. In remote areas, especially the Scottish border country, Wales and the extreme south-west, the betrothal ceremony itself, the 'handfast', continued to be treated by many of the poor as sufficient for a binding union without the blessing of the Church. There is some evidence that even in the Lowland zone quite large numbers of the poor were not getting married in church in the late seventeenth century. Indeed the church wedding had not been elevated to the position of a sacrament until 1439, and it was only in 1563, after the Reformation, that the Catholic Church first required the presence of a priest for a valid and binding marriage.

The Anglican Church naturally did not recognize this Catholic innovation, and since it took no measures of its own, the situation was left in considerable confusion. As the Anglican Church tightened its grip on society in the sixteenth and seventeenth centuries, both the laity and the clergy came increasingly to regard the wedding in church as the key ceremony, but the civil lawyers who ran the courts continued to recognize the spousals before witnesses.

Spousals could take two forms, one of which was the contract *per verba de futuro*, an oral promise to marry in the future. If not followed by consummation (which was assumed to imply consent in the present), this was an engagement which could be legally broken by mutual consent at a later date. If followed by consummation, however, it was legally binding for life. The contract *per verba de praesenti*, however, by which the pair exchanged before witnesses such phrases as 'I do take thee to my wife' and 'I do take thee to my husband', was regarded in ecclesiastical law as an irrevocable commitment which could never be broken, and which nullified a later church wedding to someone else.

To make matters worse, the canons of 1604 stipulated that a church wedding must take place between the hours of 8 a.m. and noon in the church at the place of residence of one of the pair, after the banns had been read for three weeks running. Marriages performed at night, in secular places like inns or private houses, or in towns or villages remote from the place of residence, would subject the officiating clergyman to serious penalties. The canons also forbade the marriage of persons under twenty-one without the consent of parents or guardians. The catch, however, was that although such marriages were now declared illegal, they were nonetheless valid and binding for life: this was a paradox the laity found hard to understand.

This post-1604 situation resulted in a brisk trade carried on by unscrupulous clergymen, operating in districts which were immune from superior ecclesiastical supervision, who would marry anyone for a fee, no questions asked. This was a commerce which became more and more widespread and scandalous in the late seventeenth and early eighteenth centuries, when parent–child relations on the issue of control of marriage were becoming more and more strained, and more and more children were defying their parents and running away (Plate 1). Shadwell described a clergyman who 'will marry a couple at any time; he defies licence and canonical bann, and all those foolish ceremonies'. If the playwrights are to be believed, some clergymen were even more obliging. Captain Basil in Farquhar's *The Stage Coach* reported: 'We saw a light in the parson's chamber that travelled with me, went up and found him smoking his pipe. He first gave us his blessing, then lent us his bed.' Many London churches, which were by various legal quirks unlicensed or exempt from superior jurisdiction, specialized in quick marriages. Between 1664

and 1691 some 40,000 marriages took place in St James's, Duke Place, while 'there's such a coupling at Pancras that they stand behind one another, as 'twere in a country dance'. The most flourishing trade of all was done by decayed clergymen in the vicinity of the Fleet in London, particularly in the first half of the eighteenth century when official weddings were heavily taxed, and those around the Fleet were both legally valid and very cheap. Notice-boards advertised 'Marriages performed within', and touts encouraged passers-by with the invitation 'Sir, will you be pleased to walk in and be married?' For the poor within walking distance of London, Fleet marriages were a financial godsend, but many drunken, hasty and exploitative unions were also sealed in these sordid surroundings, and once performed they could never be dissolved. These venal clergymen were also prepared, for a fee, to back-date a registration to legitimize children already born, or even to supply a man for a woman seeking a husband in a hurry.

It was not until 1753 that Lord Hardwicke's Marriage Act was passed, which at last brought coherence and logic to the laws governing marriage. From 1754 only the church wedding, not the verbal spousals, was legally binding, so that a prior oral contract was no longer a cause for the annulment of a later marriage in church; secondly, all church marriages had to be entered in the parish register and signed by both parties; thirdly, all marriages which occurred at times or in places defined as illegal by the 1604 canons were now also declared invalid; fourthly, no marriage of persons under twenty-one was valid without the consent of parents or guardians; and fifthly, enforcement of the law was transferred from the feeble control of the Church courts to the secular courts, which were empowered to impose up to fourteen years' transportation on clergymen who disobeyed the law. From now on, the only recourse for runaway couples defying their parents was the long and expensive flight to Scotland, especially to Gretna Green, where the new Marriage Act did not apply, and where there sprang up a new trade in commercialized marriage on the spot with no questions asked (Plates 2 and 3).

The debate over the passage of the Bill provides revealing evidence about current attitudes to marriage among the propertied classes. The prime reason for the Bill was frankly stated as being the fact that 'both men and women of the most infamous character had opportunities of ruining the sons and daughters of the greatest families

in England, by the convenience of marrying in the Fleet and other unlicensed places; and marrying had become as much a trade as any mechanical profession.' The solution was to deny the validity of the religious ceremony unless it conformed to certain conditions, including parental consent if under twenty-one. This necessarily involved the rejection of the ceremony as a sacrament, an indissoluble union before God. Advocates of the reform complacently declared that 'we have in this age got the better of this as well as a great many other superstitious opinions ...' so as 'to render Christianity consistent with common sense'. Marriage was now regarded as a contract like any other, subject to statutory controls for the public good, for 'this adding of a sanctity to the marriage is inconsistent with the good of every society and with the happiness of mankind in general'. The Bill was thus clearly only made possible by the growing secularization of elite society and by the acceptance of the idea that personal happiness could be achieved by public legislation. Its proponents would have preferred to restrict the clause demanding parental consent to persons of 'fortune and rank', but recognized that 'this is impossible in this country'.

The second object of the Bill was to do away with secret precontracts and secret marriages, which made bigamy all too easy (Plate 4). Public registration of the marriage was now an essential part of the ceremony. It was argued, with some plausibility, that under existing conditions in which marriage could be made by mere verbal contract, by the blessing of a wandering clergyman in an alehouse, by a private chaplain in a private house, or by a commercial clerical marriage-maker in one of the unlicensed London churches, a man could have as many wives as he wished. 'Every man may privately have a wife in every corner of this city, or in every town he has been in, without it being possible for them to know of one another.' Another speaker agreed that 'the crime of polygamy [is] now so frequent'.

At this period there was no divorce permitting remarriage in the Anglican Church. For marriages which broke down, usually because of adultery, there was only separation of bed and board, accompanied by a financial settlement. This was currently called 'divorce', but it did not allow either party to remarry. Moreover the many medieval impediments which could create a nullity were now blocked up. These had been so numerous that a rich man with a good lawyer could probably obtain one, although the records of

ecclesiastical courts show that the average man did not use this device. He almost certainly simply divorced himself or ran away without going to law. After the Reformation, an annulment could only be obtained on the three grounds of a pre-contract to someone else, consanguinity within the Levitical degrees, or male impotence over a period of three years – the last not an easy matter to prove. A man or woman whose spouse had left home and had not been heard of for a period of seven years was also free to remarry, on the assumption that the missing spouse was dead. If he or she returned, however, either the first marriage took priority over the second or the woman was permitted to choose which husband she preferred.

For most people in England, therefore, marriage was an indissoluble union, breakable only by death; this point was emphasized by Defoe in 1727, and by that acidulous spinster Miss Weeton in a sarcastic poem in 1808 about a discontented husband:

> 'Come soon, O Death, and Alice take,'
> He loudly groan'd and cry'd;
> Death came – but made a sad mistake,
> For Richard 'twas that died.

Unlike the other Protestant churches, the Anglican Church, largely because of historical accident at its inception, failed to provide for remarriage by the innocent party in cases of separation for extreme cruelty or adultery. This question remained in some doubt throughout Elizabeth's reign, but was finally clarified by number 107 of the canons of 1604, which forbade the remarriage of 'divorced' persons. To the aristocracy this created an intolerable situation, since it meant that a nobleman whose wife committed adultery before producing a son was precluded from marrying again and begetting a legal male heir to carry on the line and inherit the property. It was to circumvent this difficulty that in the late seventeenth century, as the concept of marriage as a sacrament ebbed with the waning of religious enthusiasm, divorce by private Act of Parliament became a possible avenue of escape for wealthy noblemen and others who found themselves in this predicament. But this was a very expensive procedure, and it was almost entirely confined, especially before 1760, to those who had very large properties at stake to be handed on to a male heir by a second marriage. Between 1670 and 1799, there were only 131 such Acts, virtually all instituted by husbands, and only seventeen passed before 1750. Thus in 1715, by a close

vote of 49 to 47, the House refused to pass a divorce bill requested by Sir George Downing. In 1701, at the age of fifteen, he had gone through an arranged marriage with a fifteen-year-old girl. They had then immediately parted, Sir George going abroad for four years, and the marriage, by mutual consent, had never been consummated. The bill was rejected on the grounds that both parties had been over the age of consent (fourteen and twelve respectively).

At the other end of the social scale, among the propertyless, there were also alternatives to death as a means of finally dissolving an unsatisfactory marriage. In a society without a national police force, it was all too easy simply to run away and never be heard of again. This must have been a not infrequent occurrence among the poor, to judge by the fact that deserted wives comprised over eight per cent of all the women aged between thirty-one and forty listed in the 1570 census of the indigent poor of the city of Norwich. The second alternative was bigamy, which seems to have been both easy and common. In the eighteenth century, more or less permanent desertion was also regarded as morally dissolving the marriage.

A third alternative for the poor in the eighteenth century was the unofficial folk-custom of divorce by mutual consent by 'wife-sale'. As described in 1772, the husband 'puts a halter about her neck and thereby leads her to the next market place, and there puts her up to auction to be sold to the best bidder, as if she were a brood mare or a milch-cow. A purchaser is generally provided beforehand on these occasions.' This procedure was based closely on that of the sale of cattle. It took place frequently in a cattle-market like Smithfield and was accompanied by the use of a symbolic halter, by which the wife was led to market by the seller, and led away again by the buyer. The transaction sometimes even included the payment of a fee to the clerk of the market. In the popular mind, this elaborate ritual freed the husband of all future responsibility for his wife, and allowed both parties to marry again. Very often, perhaps normally, the bargain was pre-arranged with the full consent of the wife, both purchaser and price being agreed upon beforehand. The latter varied widely, from a few pence to a few guineas.

It appears that this procedure was almost exclusively confined to the lower classes, and was centred mostly in the big towns and the west of England. It had a medieval origin, but evidence for it becomes far more frequent in the late eighteenth century, then dies away in the nineteenth, the last recorded case being 1887. To the labouring

classes, this ritualized procedure was clearly regarded as a perfectly legitimate form of full divorce, to be followed by remarriage, despite its illegality in both secular and ecclesiastical courts, and despite increasing condemnation in the public press. Indeed the courts made intermittent and half-hearted attempts to stop it, Lord Mansfield treating it as a criminal offence, a conspiracy to commit adultery.

In the late seventeenth and eighteenth centuries, therefore, full divorce and remarriage were possible by law for the very rich and by folk custom for the very poor, but impossible for the great majority in the middle who could not afford the cost of the one or the social stigma and remote risks of prosecution of the other.

CHAPTER TWO

The Demographic Facts

> Birth, copulation and death,
> That's all the facts when you come to brass tacks,
> Birth, copulation and death.
> (T. S. Eliot, *Sweeney Agonistes*)

> 'Man that is born of Woman is of few days and full of trouble. He cometh forth like a flower and is cut down. He fleeth also as a shadow and continueth not.'
> (*Emblems of Mortality*, London, 1789, p. 39 (quoting Job xiv, 1), illustrated in *Early Children's Books and their Illustration*, ed. G. Gottlieb, Pierpont Morgan Library, New York, 1975, no. 86)

The best way to start an analysis of family structure is to establish the demographic facts, which inexorably dictated so many of its basic features, including even such apparently independent variables as emotional commitment. These facts did not alter very dramatically over time, but they varied from class to class, and it is necessary to distinguish between the landed, professional and mercantile rich, the top three to five per cent who dominated the society, and the plebeians of moderate, modest or marginal wealth who formed the vast majority.

1. MARRIAGE

Among the landed classes in pre-Reformation England, nuptiality – the proportion of surviving children who married – was determined by family strategy. The three objectives of family planning were the continuity of the male line, the preservation intact of the inherited property, and the acquisition through marriage of further property or useful political alliances. Given the very uncertain prospects of survival, the first could only be ensured by the procreation of the largest