

Parricide

The political and economic revolutions of the last 200 years put on the agenda, for the first time in European and Judeo-Christian history, the massive project of destroying the patriarchal King/Father. The revolutions only partially succeeded, driving the patriarch underground into the home where he has exercised far greater tyranny over women and children; or upstairs into the civil service and the State where he has been idealised and ideologised into a kind of 'folk king' or an abstracted patriarch called 'the people': or exported to the Third World in the guise of 'development'. The imagery of the warrior, the irresponsible male maturing into the despotic father, with women as nurturing chattels, remains virtually unchanged.

What may be of some hope is that the destruction of the patriarchal King/God, although incomplete, may still be in progress. Once men put this on the agenda they could, and can, no longer prevent women from demanding that the project be completed. It is all women, not younger or subservient men, who have borne the greatest burden within this structure and it is we who have the most to gain from its destruction (not just 'deconstruction'). Once men had provided the revolutionary models for destroying the father, feminism, as part of patriarchal ideology in its new secularised still masculine form, could no longer be contained. Every masculine form of revolution or resistance, none of which have succeeded in finally escaping patriarchy, has given birth to a feminist vision which has been more radical, and therefore more threatening. Masculinist revolutions have always drawn back from incorporating the feminist vision of real destruction of the patriarch, partly out of fear, but also partly out of a deep nostalgia for the initiation – the rebirth into Fatherhood and power. But it is important to remember that patriarchy, although still alive and strong, has been under siege by all revolutions and resistances, both masculine and feminine, for the last 200 years.

Liberalism merely domesticated the tyrant, took it upon itself to civilise and privatise the patriarch and bring him under control. The fraternal contract was an attempt to liberate sons so that all men might have the opportunity of becoming the Father. There was never any real commitment to destroying patriarchy. Socialism never achieved more than to create another patriarch in working class clothes, or to dress the working man in business suits and domesticate him as the liberal masters had done. The old man dies hard. Feminists who insisted, and continue to insist, that only parricide will do, simply frighten and infuriate men who can see themselves in far greater solidarity with their fathers and grandfathers than with their mothers and sisters, who have always terrified or mystified them. Sex, the old fractured knowledge of good and evil, keeps coming back to haunt us. Subjectivities of male/female, dominance and submission are not good places to find visions of egalitarianism or liberation. However, patriarchal feminism incorporates the radical challenges to patriarchy partially commenced in the 18th century. The great hope is that men, as well as women, have begun to see that the patriarch has to die.

This cannot be seen as an unmitigated source of optimism. If feminism itself is shaped by the masculinist agenda for change, then the alternative to patriarchy (whatever that might be) which is likely to succeed is unlikely to meet feminist demands for women. 'Equality' is not in fact what we want, even on a deep level, when the substance of 'equality' is masculinist, not feminist. Nor would we want a 'liberty' that is defined in terms solely of the antithesis to patriarchal slavery. In this sense radical feminists are perfectly correct in viewing liberal or even Marxist feminisms with extreme suspicion. It may be that one day we will have a

world in which women and men share equally in the balance of power – but if it is a corporatist materialist world of environmental and human extinction, not in the sense of nuclear holocaust, but through the instrumentality of McDonald's and General Motors, where nothing is free because what's left of anything spontaneous or beautiful is in a museum, what have we really gained?

Listening to Different Voices

Let them come and see men and women and children who know how to live, whose joy of life has not yet been killed by those who claimed to teach other nations how to live.³⁰

It becomes crucial to listen to other visions, other voices. Patriarchal feminism is not the only possibility. We are beginning to understand that our sisters, and possibly also their brothers, in non-patriarchal cultures may have something to teach us. Non-patriarchal cultures are not necessarily non-masculinist. Masculine domination does not have to take form within a patriarchal model. Indigenous cultures, for example, though often masculinist in the sense that men make most of the important decisions, are not necessarily patriarchal in structure; where they are it is often borrowed from Eurocentric notions of patriarchy.³¹ There may even be cultures which are not patriarchal or masculinist at all – they only look as if they are because our male sociologists and anthropologists and historians keep seeing them within their own terms of reference – patriarchy. Similarly there are other forms of patriarchy itself, such as in Confucian East Asia, which are not the same as our own Judeo-Christian variety.³² Islamic patriarchy has followed its own genealogy, for many centuries. Women and men of other traditions, not only feminists, may be able to offer alternative visions outside of Eurocentric patriarchy that can help us redraft our own agendas, so long as we recognise that these are their visions and not ours.³³

We also need to listen to the voices of those women and men who are refashioning the 'discipline of the body', either through the exploration of sexuality, particularly homosexuality, or through practising new ethics of eating, dressing or inhabiting space. The physically or mentally disabled may be able to teach us something about the limitations of bodily space and the capacity for change within our own limits. We must see eating disorders for what the name itself implies. They are patterns of eating in rebellion against order, against the discipline of the body. But the disorder is self-destructive rather than liberatory. It is a narcissistic disorder which prevents the creation of solidarity outside the

30 Chinua Achebe, *No Longer at Ease*, quoted in Vandana Siva, *Staying Alive: Women, Ecology and Development* (Zed Books, 1989), xiv.

31 See, for example, the description of Central Australian Aboriginal culture through the eyes of a white feminist anthropologist in Diane Bell, *Daughters of the Dreaming* (Melbourne: McPhee Gribble, 1983).

32 See Hatch Afshar, 'Women, Marriage and the State in Iran' in Hatch Afshar, *Women, State and Ideology: Studies from Africa and Asia* (London: MacMillan Press, 1987); Margot Badrian and Miriam Cooke (eds), *Opening the Gates: A Century of Arab Feminist Writing* (Bloomington: Indiana University Press, 1990) and Deniz Kandiyoti, *Women, Islam and the State* (Philadelphia: Temple University Press, 1991).

33 There is a growing literature of crucial importance within so-called 'Third World feminism' that is slowly reaching a wider audience in the West. See the most recent collection of essays in Mohanty, Russo and Torres, *Third World Women and the Politics of Feminism* (Indiana University Press, 1991). Note the variety of meanings which Law can have; it does not need to be attached to a patriarchal concept of sovereignty. See 'Having Children: Women's Reproductive Choices' in Graycar and Morgan, *The Hidden Gender of Law* (Sydney: Federation Press, 1990).

object self. It is damaging not only for the women suffering these 'illnesses', but these disorders also have a political context. They are evidence of the failure of patriarchal feminism itself, and the failure of Western patriarchal women, to reach beyond the fraternal contract to others for whom hunger is not a representation of narcissism, but the worst of all oppressions.

Refashioning our understanding of the discipline of the body also means reshaping the debates over abortion, reproductive technology, pornography, prostitution and sexual violence. The 'sexual revolution' of the 1960s gave birth to 'second wave' feminism at the same time, and partly as a result of, reproductive freedom for women. But the law of reproductive control did not disappear, it shifted into our bodies and minds, and the bodies and minds of men. Violence against women (and men and children), whether it be physical aggression through war, killing, battery, incest and rape; or whether it be representational aggression through pornography and the display of extreme violence; or whether it be economic aggression through labour exploitation, prostitution and entrenched poverty, is only the most obvious and outward manifestation of this control – all of it mediated through legal structures. The shift in control of reproduction from the overtly male to the apparently female seems only to have exacerbated the outward manifestation of violence, just as the fraternal contract failed to complete the project of parricide, so the partial surrender of control over reproduction to women (a kind of enfranchisement of the female body) has failed to destroy the Law of the Father. The continuing presence of patriarchy is seen in the increasing discipline of the body reflecting the still pervasive male fear of female desire/rejection – so it is still women who must be made afraid of male desire and male rejection. The controversies which birth control, abortion and reproductive technologies continue to generate is evidence of how important this aspect of patriarchy is. The development of legal control over women as containers of life is not new, it is merely being spoken of in a refashioned language, the language not of a patriarchal God and the Law of the Father, but of technology and the rule of law.

Beyond Good and Evil

Is it the case that all resistances, all alternatives, all feminisms, must be determined by patriarchy and the Law of the Father? Perhaps what we are trying to end is not just patriarchy, not just masculinism, not just male/female or even female/male, but either/or itself. Not by synthesising the old dichotomies; not by androgyny; not through anger and denial; not through separation; but through love.

Love as the basis of an ethic beyond patriarchy seems both naive and overly optimistic. I would suggest that it is neither. The meaning of love itself needs to be redefined. It is not contained in the words 'care' or 'responsibility', although it must include those things. It is not taken from current visions of patriarchal relationships – although it may be possible that once the Father is dead, loving fatherhood by men in parental roles may be easier. We cannot rely on mother/daughter relationships either – although again maternal love has something of symbiosis and unlimited giving about it that we find nowhere else. But these are relationships that do not allow us to go beyond dependency. Nor can it be a love taken from models of sexuality, romance or 'being in love' because all these are permeated with inequalities largely derived from patriarchal ideologies of heterosexuality – although again, this kind of love has something of 'letting go', of surrender about it which we may also need to learn, without the consequence of dominance/submission.

Sisterhood could be one form that allows women to be independent and together at the same time and that might take us beyond good and evil, beyond patriarchal feminism and its associated rivalries, betrayals and acrimonious debates. 'Sisterhood' was raised as a banner of identification and change in the late 1960s when feminism began its latest siege of patriarchal structures and has since become a cliché and an object of ridicule. It seems to have been abandoned, partly because of the failure of 'undutiful' daughters to recognise our own allegiance with the Father – to get past our own identity as white, heterosexual, middle-class, liberal or Marxist feminists. Because we remain daughters, however rebellious, we have trouble identifying as sisters women who are not of our 'family' – our cultural or psychological or ideological heritage. Black women, indigenous women, women of colour, lesbians, women of the Third World, even conservative women rightly condemn feminists for our racism, competitive narrowness, our rigidity, our apparent dogmatism.

If sisterhood is to become a reality, it must be a sisterhood which has escaped from the Father – a sisterhood based on the absolute destruction of the Father. But this idea of sisterhood must not revert to nostalgia and sentimentality in the return to the Mother. Our mothers are also our sisters; we are grown women not children. By using 'sisterhood' as a feminist strategy, we might be able to escape our own identification with the voice of the Father and the inheritance of patriarchy. By eliminating the quest for Father's approval we may get rid of much of our competitiveness, our anger and betrayal. What anger we feel towards each other might be anger that is real, and not disguised jealousy or hidden denial. Our differences would not tear us apart, but might form the means to teach us how to be loyal to each other. Although the words of the first patricidal revolution were masculinist, they contain a real truth that we in the West have largely forgotten. Liberty and equality cannot be seen outside of solidarity.

This call for parricide and for sisterhood is not a call for violence against individual men, nor is it merely Utopian. It is a practical agenda, a matter of day to day choices. Within my own work it means listening to the voices of black or lesbian women which I have hitherto ignored, rather than looking to the Master-narratives of history, philosophy and law, whether written by men or by their female brothers. It means making daily choices. Will this action help or hurt a sister? Will speaking in this forum further the feeling of solidarity between women and women or, sometimes, between women and men, within this context at this time? Do I know what messages I am receiving, or giving? Am I acknowledging what I have, or for which I am responsible? Who are my allies? And what is my own allegiance worth? What of myself am I prepared to share with others? These are hard questions, hard choices that I am only just beginning to learn.

Nor does the call for parricide and sisterhood prevent, or resolve, the divisions that exist among us. The need to search for feminist, or feminine, voices will remain. Sisterhood should not presuppose sameness, merger, the disappearance of the individual in all her uniqueness. It should not, cannot, silence anger. Our anger and the anger of our sisters, and brothers, is real and justified. We need to hear and acknowledge it, not withdraw into defensiveness, denial and blame. I have seen – and experienced – too much scapegoating. Diversity within solidarity does not eliminate conflict, it contains it within the wider alterity of love. Sustained commitment to the process of liberation is essential

This brings us to the possibility of alliances with men. In order for this to happen, men must learn something about brotherhood that is not tribal, not simply a

preparation for the initiation into the Father. Men must learn the lessons they failed to grasp 200 years ago. In order to destroy the Father it is not enough to behead a king or declare independence from an Old World monarchy. Patriarchy, in its Western Judeo-Christian formulation, as it has been exported and as it is continuing to be exported, will not die until men kill the Father in themselves. The Warrior, the Hero, the Pastoral Shepherd, the Leader, the Boss, the Professor, the Master, the Corporate Director, the Great Artist or Author – all have to die to be replaced by a brother, a partner in solidarity, who is made of a masculinity that is not in training for hegemony.³⁴

THE PUBLIC/PRIVATE DICHOTOMY

Central to orthodox Western liberalism and the idea of maximisation of individual liberty is regulation of the public sphere of life – to the extent consistent with protecting individual liberty – and the privacy of private life. The implications for feminist theorists of this sharp divide is profound. Women's role and women's work traditionally relates so closely to the 'private sphere' of life – the home and the family – that it becomes ignored by liberalism: women are in large measure simply irrelevant to liberalism. Thus, for many women – irrespective of class, race or age – their very existence is defined out of political theory: they are simply disentitled to participation in the public sphere. In this section the writings of John Stuart Mill, Carole Patemen and Katherine O'Donovan reveal the problems which liberalism, with its insistence on a private (unregulated) sphere of life, causes for feminism and the difficulties which feminism causes for liberalism and its defenders.

John Stuart Mill

John Stuart Mill may be regarded as one of the most important feminist writers of the 19th century. Mill campaigned for the enfranchisement of women, for their entry into the professions and public offices. As importantly, he analysed the social position of women *vis-à-vis* their husbands. The following passages from *The Subjection of Women* (1869) reveal the far-sightedness of Mill's thinking.

THE SUBJECTION OF WOMEN³⁵

John Stuart Mill

The object of this essay is to explain as clearly as I am able, the grounds of an opinion which I have held from the very earliest period when I had formed any opinions at all on social or political matters, and which, instead of being weakened or modified, has been constantly growing stronger by the progress of reflection and the experiences of life: That the principle which regulates the existing social relations between the two sexes – the legal subordination of one sex to the other – is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other.³⁶

34 Shelley Wright, *op cit*, pp 128–40.

35 John Stuart Mill, *The Subjection of Women* (1869) (Cambridge University Press, 1989).

36 *Ibid*, p 119.

The generality of a practice is in some cases a strong presumption that it is, or at all events once was, conducive to laudable ends. This is the case, when the practice was first adopted, or afterwards kept up, as a means to such ends, and was grounded on experience of the mode in which they could be most effectually attained. If the authority of men over women, when first established, had been the result of a conscientious comparison between different modes of constituting the government of society; if, after trying various other modes of social organisation – the government of women over men, equality between the two, and such mixed and divided modes of government as might be invented – it had been decided, on the testimony of experience, that the mode in which women are wholly under the rule of men, having no share at all in public concerns, and each in private being under the legal obligation of obedience to the man with whom she has associated her destiny, was the arrangement most conducive to the happiness and well being of both; its general adoption might then be fairly thought to be some evidence that, at the time when it was adopted, it was the best: though even then the considerations which recommended it may, like so many other primeval social facts of the greatest importance, have subsequently, in the course of ages, ceased to exist. But the state of the case is in every respect the reverse of this. In the first place, the opinion in favour of the present system, which entirely subordinates the weaker sex to the stronger, rests upon theory only; for there never has been trial made of any other: so that experience, in the sense in which it is vulgarly opposed to theory, cannot be pretended to have pronounced any verdict. And in the second place, the adoption of this system of inequality never was the result of deliberation, or forethought, or any social ideas, or any notion whatever of what conduced to the benefit of humanity or the good order of society. It arose simply from the fact that from the very earliest twilight of human society, every woman (owing to the value attached to her by men, combined with her inferiority in muscular strength) was found in a state of bondage to some man. Laws and systems of polity always begin by recognising the relations they find already existing between individuals. They convert what was a mere physical fact into a legal right, give it the sanction of society, and principally aim at the substitution of public and organised means of asserting and protecting these rights, instead of the irregular and lawless conflict of physical strength. Those who had already been compelled to obedience became in this manner legally bound to it. Slavery, from being a mere affair of force between the master and the slave, became regularised and a matter of compact among the masters, who, binding themselves to one another for common protection, guaranteed by their collective strength the private possessions of each, including his slaves, as well as the whole of the female. Any many ages elapsed, some of the ages of high cultivation, before any thinker was bold enough to question the rightfulness, and the absolute social necessity, either of the one slavery or of the other. By degrees such thinkers did arise: and (the general progress of society assisting) the slavery of the male sex has, in all countries of Christian Europe at least (although, in one of them, only within the last few years) been at length abolished, and that of the female sex has been gradually changed into a milder form of dependence. But this dependence, as it exists at present, is not an original institution, taking a fresh start from considerations of justice and social expediency – it is the primitive state of slavery lasting on, through successive mitigations and modifications occasioned by the same causes which have softened the general manners, and brought all human relations more under the control of justice and the influence of humanity. It has not lost the taint of its brutal origin. No presumption in its favour, therefore, can be drawn from the fact of its existence. The only such presumption

which it could be supposed to have, must be grounded on its having lasted till now, when so many other things which came down from the same odious source have been done away with. And this, indeed, is what makes it strange to ordinary ears, to hear it asserted that the inequality of rights between men and women has no other source than the law of the strongest.³⁷

Less than forty years ago, Englishmen might still by law hold human beings in bondage as saleable property: within the present century they might kidnap them and carry them off, and work them literally to death. This absolutely extreme case of the law of force, condemned by those who can tolerate almost every other form of arbitrary power, and which, of all others, presents features the most revolting to the feelings of all who look at it from an impartial position, was the law of civilised and Christian England within the memory of persons now living: and in one half of Anglo-Saxon America three or four years ago, not only did slavery exist, but the slave trade, and the breeding of slaves expressly for it, was a general practice between slave states.³⁸ So true is it that unnatural generally means only uncustomary, and that everything which is usual appears natural. The subjection of women to men being a universal custom, any departure from it quite naturally appears unnatural.³⁹

On one of the inevitable outcomes of patriarchal power, Mill writes:

It is a political law of nature that those who are under any power of ancient origin, never begin by complaining of the power itself, but only of its oppressive exercise. There is never any want of women who complain of ill usage by their husbands. There would be infinitely more, if complaint were not the greatest of all provocatives to a repetition and increase of the ill usage. It is this which frustrates all attempts to maintain the power but protect the woman against its abuses. In no other case (except that of a child) is the person who has been proved judicially to have suffered an injury replaced under the physical power of the culprit who inflicted it. Accordingly wives, even in the most extreme and protracted cases of bodily ill-usage, hardly ever dare avail themselves of the laws made for their protection: and if, in a moment of irrepressible indignation, or by the interference of neighbours, they are induced to do so, their whole effort afterwards is to disclose as little as they can, and to beg off their tyrant from his merited chastisement.

All causes, social and natural, combine to make it unlikely that women should be collectively rebellious to the power of men. They are so far in a position different from all other subject classes, that their masters require something more from them than actual service. Men do not want solely the obedience of women, they want their sentiments. All men, except the most brutish, desire to have, in the women most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite. They have therefore put everything in practice to enslave their minds. The masters of all other slaves rely, for maintaining obedience, on fear; either fear of themselves, or religious fears. The masters of women wanted more than simple obedience, and they turned the whole force of education to effect their purpose. All women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but

37 *Ibid*, pp 122–24.

38 *Ibid*, p 127.

39 *Ibid*, p 130.

submission, and yielding to the control of others. All the moralities tell them that it is the duty of women, and all the current sentimentalities that it is their nature, to live for others: to make complete abnegation of themselves, and to have no life but in their affections. And by their affections are meant the only ones they are allowed to have – those to the men with whom they are connected, or to the children who constitute an additional and indefeasible tie between them and a man. When we put together three things – first, the natural attraction between opposite sexes; secondly, the wife's entire dependence on the husband, every privilege or pleasure she has being either his gift, or depending entirely on his will; and lastly, that the principal object of human pursuit, consideration, and all objects of social ambition, can in general be sought or obtained by her only through him, it would be a miracle if the object of being attractive to men had not become the polar star of feminine education and formation of character. And, this great means of influence over the minds of women having been acquired, an instinct of selfishness made men avail themselves of it to the utmost as a means of holding women in subjection, by representing to them meekness, submissiveness, and resignation of all individual will into the hands of a man, as an essential part of sexual attractiveness. Can it be doubted that any of the other yokes which mankind have succeeded in breaking, would have subsisted till now if the same means had existed, and had been as sedulously used, to bow down their minds to it? If it had been made the object of the life of every young plebeian to find personal favour in the eyes of some patrician, of every young serf with some seigneur; if domestication with him, and a share of his personal affections, had been held out as the prize which they all should look out for, the most gifted and aspiring being able to reckon on the most desirable prizes; and if, when this prize had been obtained, they had been shut out by a wall of brass from all interests not centreing on him, all feelings and desires but those which he shared or inculcated; would not serfs and seigneurs, plebeians and patricians, have been as broadly distinguished at this day as men and women are? and would not all but a thinker here and there, have believed the distinction to be a fundamental and unalterable fact in human nature?

The preceding considerations are amply sufficient to show that custom, however universal it may be, affords in this case no presumption, and ought not to create any prejudice, in favour of the arrangements which place women in social and political subjection to men. But I may go farther, and maintain that in the course of history, and the tendencies of progressive human society, afford not only no presumption in favour of this system of inequality of rights, but a strong one against it; and that, so far as the whole course of human improvement up to this time, the whole stream of modern tendencies, warrants any interference on the subject, it is, that this relic of the past is discordant with the future, and must necessarily disappear.⁴⁰

The general opinion of men is supposed to be, that the natural vocation of a woman is that of a wife and mother. I say, is supposed to be, because, judging from acts – from the whole of the present constitution of society – one might infer that their opinion was the direct contrary. They might be supposed to think that the alleged natural vocation of women was of all things the most repugnant to their nature; insomuch that if they are free to do anything else – if any other means of living, or occupation of their time and faculties, is open, which has any

40 *Ibid*, pp 132–34.

chance of appearing desirable to them – there will not be enough of them who will be willing to accept the condition said to be natural to them. If this is the real opinion of men in general, it would be well that it should be spoken out. I should like to hear somebody openly enunciating the doctrine (it is already implied in much that is written on the subject) – ‘It is necessary to society that women should marry and produce children. They will not do so unless they are compelled. Therefore it is necessary to compel them.’ The merits of the case would then be clearly defined. It would be exactly that of the slaveholders of South Carolina and Louisiana. ‘It is necessary that cotton and sugar should be grown. White men cannot produce them. Negroes will not, for any wages which we choose to give. Ergo they must be compelled.’ An illustration still closer to the point is that of impressment. Sailors must absolutely be had to defend the country. It often happens that they will not voluntarily enlist. Therefore there must be the power of forcing them. How often has this logic been used! and, but for one flaw it in, without doubt it would have been successful up to this day. But it is open to the retort – First pay the sailors the honest value of their labour. When you have made it as well worth their while to service you, as to work for other employers, you will have no more difficulty than others have in obtaining their services. To this there is no logical answer except ‘I will not’, and as people are now not only ashamed, but are not desirous, to rob the labourer of his hire, impressment is not longer advocated. Those who attempt to force women into marriage by closing all other doors against them, lay themselves open to a similar retort. If they mean what they say, their opinion must evidently be, that men do not render the married condition so desirable to women, as to induce them to accept it for its own recommendations. It is not a sign of one’s thinking the boon one offers very attractive, when one allows only Hobson’s choice, ‘that or none’. And here, I believe, is the clue to the feelings of those men, who have a real antipathy to the equal freedom of women. I believe they are afraid, not lest women should be unwilling to marry, for I do not think that any one in reality has that apprehension; but lest they should insist that marriage should be on equal conditions; lest all women of spirit and capacity should prefer doing almost anything else, not in their own eyes degrading, rather than marry, when marrying is giving themselves a master, and a master too of all their earthly possessions.⁴¹

Mill devotes Chapter 2 of *The Subjection of Women* to the issue of marriage.

Marriage being the destination appointed by society for women, the prospect they are brought up to, and the object of which it is intended should be sought by all of them, except those who are too little attractive to be chosen by any man as his companion; one might have supposed that everything would have been done to make this condition as eligible to them as possible, that they might have no cause to regret being denied the option of any other. Society, however, both in this, and, at first, in all other cases, has preferred to attain its object by foul rather than fair means: but this is the only case in which it has substantially persisted in them even to the present day. Originally, women were taken by force, or regularly sold by their father to the husband. Until a late period in European history, the father had the power to dispose of his daughter in marriage at his own will and pleasure, without any regard to hers. The Church, indeed, was so far faithful to a better morality as to require a formal ‘yes’ from the woman at the marriage ceremony; but there was nothing to shew that the consent was other than compulsory; and it was practically impossible for the girl to refuse

41 *Ibid*, pp 144–45.

compliance if the father persevered, except perhaps when she might obtain the protection of religion by a determined resolution to take monastic vows. After marriage, the man had anciently (but this was anterior to Christianity) the power of life and death over his wife. She could invoke no law against him; he was her sole tribunal and law. For a long time he could repudiate her, but she had no corresponding power in regard to him. By the old laws of England, the husband was called the lord of the wife; he was literally regarded as her sovereign, inasmuch that the murder of a man by his wife was called treason (petty as distinguished from high treason), and was more cruelly avenged than was usually the case with high treason, for the penalty was burning to death. Because these various enormities have fallen into disuse (for most of them were never formally abolished, or not until they had long ceased to be practised) men suppose that all is now as it should be in regard to the marriage contract; and we are continually told that civilisation and Christianity have restored to the woman her just rights. Meanwhile the wife is the actual bond servant of her husband: no less so, as far as legal obligation goes, than slaves commonly so called. She vows a lifelong obedience to him at the altar, and is held to it all through her life by law. Casuists may say that the obligation of obedience stops short of participation in crime, but it certainly extends to everything else. She can do no act whatever but by his permission, at least tacit. She can acquire no property but for him; the instant it becomes hers, even by inheritance, it becomes *ipso facto* his. In this respect the wife's position under the common law of England is worse than that of slaves in the laws of many countries ...⁴²

In the immense majority of cases⁴³ there is no settlement: and the absorption of all rights, all property, as well as all freedom of action, is complete. The two are called 'one person in law', for the purpose of inferring that whatever is hers is his, but the parallel inference is never drawn that whatever is his is hers; the maxim is not applied against the man, except to make him responsible to third parties for her acts, as a master is for the acts of his slaves or of his cattle. I am far from pretending that wives are in general no better treated than slaves; but no slave is a slave to the same lengths, and in so full a sense of the word, as a wife is. Hardly any slave, except one immediately attached to the master's person, is a slave at all hours and all minutes; in general he has, like a soldier, his fixed task, and when it is done, or when he is off duty, he disposes, within certain limits, of his own time, and has a family life into which the master rarely intrudes. 'Uncle Tom' under his first master has his own life in his 'cabin', almost as much as any man whose work takes him away from home, is able to have in his own family. But it cannot be so with the wife. Above all, a female slave has (in Christian countries) an admitted right, and is considered under a moral obligation, to refuse to her master the last familiarity. Not so the wife: however brutal a tyrant she may unfortunately be chained to – though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him – he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her own inclinations.⁴⁴

42 *Ibid*, pp 146–47.

43 The nobility could enter a settlement whereby the wife's property was protected from the husband's usage, although it could not – save by the terms of the settlement – be used by the wife.

44 *Ibid*, pp 146–48.

Marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistress of every house.⁴⁵

The 'subjection of women' described by John Stuart Mill, reinforced by law, has proven slow to pass. It was, for example, to be as late as 1970 before the United Kingdom Parliament accepted that laws which effectively retained the concept of 'woman as property' were no longer reflective of the demand for equality. Cedric Thornberry considers the reforms in the article which follows:

WHAT PRICE THE MISSUS NOW?⁴⁶

Cedric Thornberry⁴⁷

From New Year's Day, actions for damages for adultery, breach of promise to marry, enticement, harbouring and seduction of a child or spouse are abolished.⁴⁸ Thus, towards the end of the 20th century, one of the legal bastions of the Englishmen's right to treat his family as his property is removed.

Opinion polls in recent years have shown that the right is still regarded by most of the population as sacred. However unpalatable to the liberals' ideal of England, the brutal fact is that we are a nation of Andy Capps and his Missuses. Way back in 1912 the Royal Commission on Divorce noted that the idea of getting money for your wife was peculiar among civilised peoples to the Anglo-Saxons, and that foreigners could not understand how English law could sustain it. And when the Law Commission gingerly advised the abolition of these legal enormities two years ago its members were well aware that they were going against the popular will.

It is not, for once, the fault of the lawyers that these things have survived. Most judges (though there are Andy Capps on the Bench as well) have for years seemed baffled by the retention of these actions. Deserted husbands have had to be dissuaded by their lawyers from claiming damages 'because it will alienate the Court'. Though the legislature casually re-enacted the right to damages in 1965 it has been clear for many years that the majority of MPs were unhappy about it – as they showed earlier this year when the whips were taken off and they were given a free vote. We have the law which we not only deserve but desire.

Women slaves

Women's Liberation asserts that woman is still the most colonialised people on earth. Slavery, as such, was effectively abolished in England 250 years ago. Yet the legal history and modern rationale of the damages claim is founded on the idea of bondage. The action began while a woman was in all ways regarded as the husband's property. Everything she had went to him on marriage. Her earnings were his. She was viewed as a child and 'subject to physical punishment at his hands (provided it was moderate in extent)'.

The logic of this was that a wife, however eager, was unable to consent to going to bed with her lover. So the law made an irrebuttable presumption that intercourse was forcible. In 1620 one man was sued by an irate husband for 'for that he took his wife away for five years, *simul cum* her gown and petticoat, and

45 *Ibid*, p 196.

46 *The Guardian*, 29 December 1970.

47 At the time of writing, Lecturer in Law, London School of Economics and Political Science.

48 Law Reform (Miscellaneous Provisions) Act 1970.