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## WOMEN, CONSUMPTION AND COVERTURE IN ENGLAND, c. 1760–1860\*

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**ABSTRACT.** *Historians concerned to demonstrate women's increasing relegation to a private, domestic sphere in the later eighteenth and nineteenth centuries have emphasized the extent to which married women's opportunities were restricted by the common law practice of coverture, which deprived wives of the ability to enter into economic contracts in their own right. Yet social and cultural historians have argued that women played an essential role as purchasers in promoting the consumer revolution of these decades. This article explores the devices used by married women consumers to evade the strictures of coverture. Focusing on three overlapping practices – wives' willingness and ability to pledge their husbands' credit to purchase a wide range of 'necessary' goods, their use of this tactic to secure a degree of independence from unsuccessful marriages, and their active participation in the deliberations of a variety of small claims courts – it argues that the purchase of coverture in the sphere of consumption was partial and contested, rather than monolithic.*

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Historians of English gender relations have long recognized the ideological force exerted in prescriptive literature by a close thematic articulation linking women, luxury and debt. Long before Thorstein Veblen had propounded his now classic formulation of the central role of leisured ladies in capitalist consumption, successive generations of English observers had condemned women's increasingly visible and voluminous acquisitive activities as prime catalysts of male financial ruin. The fate of the fictional squire Wiseacre, the hapless subject of a didactic essay published in *The matrimonial preceptor* in 1765, is broadly representative of this received line of association. Enjoying a frugal lifestyle and a clear estate of £500 per annum, Wiseacre fell from economic grace when he sought – 'by setting out in the high mode of wedlock' – to secure the affections of one Fanny Flippant. Enmeshed by his consort in needless expenditure, the protagonist of this characteristic tale was confined to a debtors' prison within five years of his marriage, leaving his wife and four young children as a burden on the parish.<sup>1</sup>

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<sup>1</sup> 'The folly of extravagant expenses after entering upon marriage', in Anon., *The matrimonial preceptor: a collection of examples and precepts relating to the married state from the most celebrated writers ancient and modern* (London, 1765), pp. 117–21, citation from p. 118. In Veblen's analysis, wives'

More corrosive even than their habit of inciting their husbands to uxorious expenditure was married women's tendency to contract dangerous debts of their own. Women constituted both an essential and a particularly dynamic sector of the new population of consumers that stoked and reshaped western markets in the eighteenth century,<sup>2</sup> but their perceived independence in this capacity was freighted with alarming connotations for contemporaries. The author of an article in the *Spectator* (reprinted in *The matrimonial preceptor* of 1765) was especially explicit in this regard. Denouncing the perils of female gaming, he argued that a married woman's ability to pay her debts differed both quantitatively and qualitatively from that of her husband. For while 'the man that plays beyond his income pawns his estate, the woman must find out something else to mortgage, when her pin-money is gone: the husband has his lands to dispose of, the wife her person'.<sup>3</sup> Sexual propriety and economic probity thus went hand in hand in the prescriptive literature of the consumer revolution: in this view, a woman's uncontrolled economic power, like the untrammelled sexuality to which it was often linked, threatened the autonomy of the family unit and through it the very fabric of society.

Shrill, insistent and pervasive in the didactic writings of the eighteenth and nineteenth centuries, this emphasis on the destructive force of female economic agency stands in sharp contrast to the characteristic preoccupations of nineteenth- and twentieth-century feminist critics. Intent to document the exclusion of women from much of public life, these observers have emphasized the extent to which the common law practice of coverture – which subsumed a married woman's legal and financial identity under that of her husband – placed strict limits on the formal economic activities of English women, and thereby helped to establish an overarching legal framework conducive to the

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conspicuous consumption serves to demonstrate the leisure and thus status of their husbands. 'With the disappearance of servitude, the number of vicarious consumers attached to any one gentleman tends, on the whole, to decrease', he argues. 'The dependent who was first delegated for these duties was the wife, or the chief wife; and, as would be expected, in the later development of the institution, when the number of persons by whom these duties are customarily performed gradually narrows, the wife remains the last... as we descend the social scale, the point is presently reached where the duties of vicarious leisure and consumption devolve upon the wife alone' [Thorstein Veblen, *The theory of the leisure class*, intro. Robert Lekachman (New York, 1979), pp. 80–1].

<sup>2</sup> For the debate on women's contribution to the consumer revolution, see Neil McKendrick, 'Home demand and economic growth: a new view of the role of women and children in the industrial revolution', in Neil McKendrick (ed.), *Historical perspectives: studies in English thought and society in honour of J. H. Plumb* (London, 1974), pp. 152–210, and Lorna Weatherill, 'A possession of one's own: women and consumer behavior in England, 1660–1740', *Journal of British Studies*, xxv (1986), 131–56. Amanda Vickery details the practice and social meanings of female consumption in England in 'Women and the world of goods: a Lancashire consumer and her possessions, 1751–81', in John Brewer and Roy Porter (eds.), *Consumption and the world of goods* (London, 1993), pp. 274–301, esp. pp. 274–8. Similar arguments regarding women's relations to consumer goods in Scotland are found in Stana Nenadic, 'Middle-rank consumers and domestic culture in Edinburgh and Glasgow 1720–1840', *Past and Present*, no. 145 (Nov. 1994), pp. 122–56, esp. p. 129.

<sup>3</sup> Cited in Anon., *The matrimonial preceptor*, p. 125.

elaboration of the ideology of separate spheres.<sup>4</sup> In this context references to William Blackstone's celebrated assertion that 'by marriage the very being or legal existence of a woman is suspended'<sup>5</sup> have become a historiographical commonplace, serving to underscore not the perilous extent but rather the severe limitation of women's economic opportunities before the passage of the Married Women's Property Acts in the later decades of the nineteenth century. Thus Susan Kingsley Kent, citing Blackstone's *Commentaries*, asserts that 'Under the law of coverture, married women had no rights or existence apart from their husbands', and Mary Lyndon Shanley, again citing Blackstone, adduces married women's inability to enter into economic contracts in their own right as evidence that 'under the common law a wife was in many ways regarded as the property of her husband'.<sup>6</sup> These interpretations nicely capture and convey the tenor of polemic elaborated by nineteenth-century feminists themselves. The tone of outrage expressed in Millicent Fawcett's much-quoted recollection of her encounter with the legal system in the 1870s was characteristic. Appearing in a London court at the trial of a youth who had snatched her handbag, Fawcett was incensed to find his crime defined as stealing 'a purse... the property of Henry Fawcett'. On hearing these words, as she recalled in her autobiography, 'I felt as if I had been charged with theft myself.'<sup>7</sup>

There is much to commend in the feminist emphasis on and critique of the legal status – or legal nonentity – of women under coverture, but there is also much that it is excluded from its ambit. The instruments of equity, which operated outside the common law to secure the separate property of affluent married women, are most familiar in this context, having been the object of

<sup>4</sup> See for example Catherine Hall, *White, male and middle-class: explorations in feminism and history* (New York, 1992), esp. pp. 97, 119–20, 177, 195, and more broadly Leonore Davidoff and Catherine Hall, *Family fortunes: men and women of the English middle class 1780–1850* (Chicago, 1987). 'Even in those cases where women had a direct financial stake in the family enterprise, their legal status prevented them from active partnership', Hall and Davidoff argue. 'It is not surprising that women were regarded as poor credit risks given their legal disabilities', they conclude. 'This general lack of commercial credibility was an important factor in the limited scale of women's business operations' (pp. 277–8). For the growing historiographical debate on the purchase of separate spheres ideology, see Amanda Vickery, 'Golden age to separate spheres?: a review of the categories and chronology of English women's history', *Historical Journal*, xxxvi, 2 (1993), 383–414.

<sup>5</sup> William Blackstone, *Commentaries on the laws of England* (4 vols., Oxford, 1765–69), I, 442. Blackstone was hardly the first legal writer to underline the legal disabilities of married women. The anonymous author of a much-cited treatise was equally emphatic at the beginning of the century. 'A Feme Covert in our Books is often compared to an Infant, both being persons disabled in the Law, but they differ much; an Infant is capable of doing any Act for his own Advantage; so is not a Feme Covert', he opined. Anon., *Baron and feme: a treatise of law and equity concerning husbands and wives* (London, 1738 edn), p. 8.

<sup>6</sup> Susan Kingsley Kent, *Sex and suffrage in Britain, 1860–1914* (Princeton, 1987), p. 27; Mary Lyndon Shanley, *Feminism, marriage, and the law in Victorian England, 1850–1895* (Princeton, 1989), p. 8.

<sup>7</sup> Millicent Garrett Fawcett, *What I remember* (New York, 1925), p. 62. Much the same tone is conveyed in, for example, Frances Power Cobbe's tract on married women's rights, *Criminals, idiots, women, and minors: is the classification sound?* (London, 1869).

considerable attention from legal and women's historians.<sup>8</sup> Other, less familiar legal practices that expanded women's economic agency were however arguably more important on a daily basis to the bulk of married women than was equity. Recent work using probate accounts has for example demonstrated that despite a general diminution of women's property rights in the early modern period, seventeenth- and eighteenth-century women enjoyed substantially more economic authority than the literature on coverture would suggest. Amy Erickson has argued that while 'strict [equitable] settlements to preserve property in the male line were used only by the wealthy, different types of prenuptial settlements to preserve the wife's property interests were implemented by all levels of society, albeit often without the technical legal terminology'. Sampling probate accounts, Erickson found that at least 10 per cent of non-elite married women protected their property with such informal settlements, evidence that argues against the notion 'that wives stopped thinking of certain property as theirs simply for the duration of the marriage' and that – more broadly – undermines 'any simple idea of women's legal "annihilation" within marriage'.<sup>9</sup> Maxine Berg's analysis of probate accounts in eighteenth-century Sheffield and Birmingham similarly emphasizes that women played an important economic role as executors and guardians in some cities, where moreover they 'did own real property and, in most cases... disposed of it as they wished'.<sup>10</sup>

Just as the analysis of probate accounts has revealed women, including wives, to have exerted considerable economic autonomy as property owners, recent research in legal history has demonstrated their conspicuous presence in English law courts. Tim Meldrum's account of the consistory court in the eighteenth century traces an increasing feminization of the court's business. Indeed, women came to play such a dominant role in the litigation of actions for sexual slander, he argues, that 'the Bishop of London's consistory had become, by 1745, a women's court'.<sup>11</sup> Ginger Frost's analysis of breach of promise suits also emphasizes the purposive nature of women's engagement with the legal process. Responsible for initiating ninety-seven per cent of the suits in her sample, female plaintiffs 'learned their legal rights, acquired expert aid, and then walked into a largely male public space and held their own'.<sup>12</sup> As Gail Savage's analysis of the early history of the Divorce Act of 1857

<sup>8</sup> See esp. Lloyd Bonfield, *Marriage settlements, 1601–1740: the adoption of the strict settlement* (Cambridge, 1983), and Susan Staves, *Married women's separate property in England, 1660–1833* (Cambridge, Mass., 1990).

<sup>9</sup> Amy Louise Erickson, *Women and property in early modern England* (London, 1993), pp. 150–1.

<sup>10</sup> Maxine Berg, 'Women's property and the industrial revolution', *Journal of Interdisciplinary History*, xxxiv, 2 (1993), 238, 242–3.

<sup>11</sup> Tim Meldrum, 'A women's court in London: defamation at the Bishop of London's consistory court, 1700–1745', *The London Journal*, xix, 1 (1994), 1–20, citation from p. 15.

<sup>12</sup> Ginger Frost, "'I Shall Not Sit Down and Crie": women, class and breach of promise of marriage plaintiffs in England, 1850–1900', *Gender & History*, vi, 2 (1994), 224–45, citation from p. 240. Similar lines of argument for a somewhat earlier period inform the essays collected in Jenny Kermode and Garthine Walker, (eds.), *Women, crime and the courts in early modern England* (London, 1994).

forcefully demonstrates, married women enjoyed considerable success in obtaining judicial separations and protection orders from the mid-Victorian Divorce Court as well.<sup>13</sup>

This paper seeks to extend these lines of analysis about female legal and economic experience by examining the role of married women as consumer debtors in the century before the Divorce Act of 1857. Specifically, it explores the obvious (and arguably growing) disjuncture in the eighteenth and nineteenth centuries between, on the one hand, the legal precedents that governed the debt obligations of wives under the common law and, on the other hand, the actual economic experiences of female consumers. Three practices that contravened the norms of coverture are given particular prominence here. First was the so-called law of necessities, the recognition by the common law itself that married women, although precluded from making economic contracts in their own right, were empowered to make contracts on their own behalf for necessities, as agents of their husbands. Second was the strategic use of the law of necessities as an instrument of credit deployed by women determined to separate from their husbands. And third were the enabling conventions of the courts of requests and the county court system, the networks of small claims courts with jurisdiction over debts of £20 and less. Here women who remained within the marital home could and did exert a degree of autonomy denied them by the practices of the common law – appearing in person to negotiate and contest debts for which their husbands were ultimately liable.

An analysis of married women's complicated debt and credit relations from these three perspectives suggest that, at the level of much day-to-day life, the law of coverture is best described as existing in a state of suspended animation. By this I mean to suggest that wives' legal inability to contract and litigate debts was often ignored or attenuated in practice, but also to indicate that the norms of coverture shaped or animated women's experience of debt even in their suspension. The operation of this state of suspended animation by no means obviates the overarching oppression of the common law for married women. But it does help to provide a broader context for understanding the efflorescence of didactic literature condemning married women's increasingly uncontrolled consumption during a period in which wives' formal economic rights appear to have been diminishing. In so doing it helps to explain how the English economy not only functioned but expanded dramatically in the eighteenth and nineteenth centuries, despite the formal legal exclusion of much of the adult population from legitimate consumer activity.

<sup>13</sup> Gail L. Savage, "'Intended only for the husband': gender, class, and the provision of divorce in England, 1858–1868", in Kristine Garrigan (ed.), *Victorian scandals: representations of gender and class* (Athens, Ohio, 1992), pp. 26–8.

## I

To begin, then, with coverture and the common law. The ability of creditors to seize and imprison the bodies of defaulting debtors provides one index of the gendered character of credit relations in this period, for the impact of coverture is immediately apparent from the relative under-representation of women in the population of imprisoned debtors. Whereas women figured prominently in the criminal jail population, constituting for example nearly 20 per cent of those incarcerated for crime in local and national prisons in the later nineteenth century,<sup>14</sup> female insolvents represented at most a small fraction of confined debtors. Only 4.7 per cent of the debtors imprisoned in Lincoln Castle from 1810 to 1811 were women; at Lancaster Castle, 2.1 per cent of debtors were women in 1793, and 2.8 per cent were women sixty-two years later in 1851.<sup>15</sup> Proportionately fewer women appear to have been imprisoned for debt as the nineteenth century progressed. Women represented 2.1 per cent of debtors jailed in local prisons in 1860, but only 1 per cent in 1870 and 0.5 per cent ten years later.<sup>16</sup> Coverture, although by no means a full explanation of this low representation of women in the imprisoned debtors' population, is at least a partial one. For in preventing married women from legally contracting debts – suspending, in Blackstone's famous formulation, their 'very being or legal existence' with regard to financial transactions – the common law precluded those tradesmen who did venture to extend credit to wives from seeking to enforce married women's supposed liability for their transactions through the court and prison systems.

But the relationship between legal theory and economic practice is far more complex than the most familiar adages of the common law would suggest. Blackstone's synopsis of the law of coverture was indeed a foundation text of the law of women's property: legal theorists and practitioners of the eighteenth and nineteenth centuries, like subsequent historians of the twentieth century, typically began their explications of coverture by citing from or paraphrasing the *Commentaries* to the effect that married women had no right to make economic contracts or to purchase goods on credit, no ability to represent themselves or their spouses in court, indeed no economic or legal existence separate from their husbands.<sup>17</sup> Having painted this bleak portrait of married women's abject subjection to the common law, however, the legal pundits of

<sup>14</sup> Lucia Zedner, *Women, crime and custody in Victorian England* (Oxford, 1991), p. 1.

<sup>15</sup> A list of debtors who have been received into the gaol of the county of Lincoln 1 Jan. 1810–April 1823, London, Public Record Office (P.R.O.), PCOM 2/309; Lancaster gaol debtors register 1792–97, London, P.R.O., PCOM 2/440; Lancaster Castle census, 1851, microfilm copy in Lancaster Reference Library. The figures for Lincoln were 7 women among 150 debtors; those for Lancaster were 5 women among 234 debtors in 1793 and 3 women among 109 debtors in 1851.

<sup>16</sup> Zedner, *Women, crime and custody*, pp. 318–19.

<sup>17</sup> Anon., *The laws respecting women; as they regard their natural rights, or their connections and conduct* (London, 1777), p. 65; R. S. Donnison Roper, *A treatise of the law of property arising from the relation between husband and wife*, with additions by Edward Jacob (2 vols., London, 1826 edn), 1, 1; John Edward Bright, *A treatise on the law of husband and wife, as respects property* (2 vols., London, 1849), 1, 1; Thomas Barrett-Lennard, *The position in law of women* (London, 1883), p. xxvii.

the age swiftly proceeded to qualify it. The law of necessities represents perhaps the most significant of these qualifications of coverture within the law itself. Enshrined in legal precedent since at least the reign of Henry VI,<sup>18</sup> married women's ability to contract for necessities was a natural corollary of their subordination to their husbands. As a treatise on women's property rights explained in 1853, 'The husband's consent to his wife supplying herself with *necessaries* suitable to his own station in life, is implied, whether she lives with him, or parts under circumstances which justify her in so doing, provided she be chaste, since a husband is bound to maintain and protect his wife, seeing that he acquires all her available property (if any) by force of his marital right.'<sup>19</sup>

Assertions in law books of women's legal impotence and nonentity were thus typically paired with explications of wives' ability to contract for necessities in their husbands' names. 'The Wife cannot by her contract bind the Husband, for the Husband is the superior and governing Power, and the Law has entrusted him with the Conduct of the whole Family; and therefore the Wife's Acts in bargaining are wholly void', *The law of evidence* proclaimed in 1760. 'But the Act of the Wife contracting is presumptive Evidence to persuade the Jury of the Contract of the Husband... and where the Wife cohabiting with the Husband takes up Goods in his Name, this *prima facie* is to be presumed [to be] the Contract of the Husband, for it is to be presumed that the Husband will trust so near a Relation to act for him.'<sup>20</sup> An understanding of married women's economic potential under the common law thus requires a recognition of the Janus-face of coverture, which at once stripped wives of all economic agency and bestowed vicarious consumer rights upon them. Although women forced from the home for their own adultery lost this right to pledge their husband's credit for necessities, a woman compelled to leave her husband's home by his cruelty could continue to pledge his credit, as could adulterous women who remained within the marital home. As Chief Justice Holt determined at London's Guildhall early in the eighteenth century, 'Tho' the Wife be ever so lewd, yet while she cohabits with her Husband, he is bound to find her Necessaries and pay for them; for he took her for better [and] worse....'<sup>21</sup>

Designed to secure the orderly flow of goods into the households of married couples and to protect the interests of wives when their marriages were disrupted by their husbands' misconduct, the law of necessities inadvertently endowed married women with considerable powers in the realm of consumption. Doubly hierarchical, the law submitted wives to the strictures of both class and patriarchy, conferring on a married women only the right to purchase in her husband's name those items 'suitable to his rank and

<sup>18</sup> Anon., *Baron and feme*, p. 274.

<sup>19</sup> J. J. S. Wharton, *An exposition of the laws relating to the women of England; showing their rights, remedies, and responsibilities, in every position of life* (London, 1853), p. 369.

<sup>20</sup> Anon., *The law of evidence* (London, 1760), p. 183.

<sup>21</sup> William Salkeld, *Reports of cases adjudged in the court of King's Bench* (London, 1773), p. 19.



fortune'.<sup>22</sup> A case dating from the reign of Queen Anne and frequently cited in law books suggests the limits of this consumer potential for labouring women. Here a wife deserted by 'an ordinary working Man' found no consolation in the law of necessities: the court, evidently swayed by her low status and behaviour, ruled that since she had proved willing to work in her husband's absence, 'the Money she earned should go to keep her'.<sup>23</sup> But precisely because it was intended to permit women to maintain a lifestyle suitable to their husbands' rank and fortune, the law of necessities allowed more privileged women considerable discretion and room for manipulation in market negotiations and marital conflicts. Legal treatises routinely drew attention to the social elasticity that obtained in determinations of married women's legitimate needs. In a favourite case from the eighteenth century, an unwary tradesman sold the estranged wife of a serjeant-at-law lace for a petticoat and silver fringes for her sidesaddle. Valued at the very considerable sum of £94, these items nonetheless figured as necessities in the court's calculations. Deeming goods of lace and silver suitable accoutrements for the consort of a former judge, the jury held the husband fully liable for his wife's purchases.<sup>24</sup>

## II

The evidence from a range of sources on marital separation suggests that wives' ability to manipulate the law of necessities when their marriages came unstuck was not confined to a few isolated and atypical cases seized upon by the writers of law manuals, but rather exerted a broad influence on both consumer and marital relations. Informal separations were, as recent studies have demonstrated, far more frequent among a range of social groups in England than has hitherto been recognized, allowing many disaffected couples denied access to divorce an effective escape route from unsuccessful marriages.<sup>25</sup> Wealthy women intent to wrest generous maintenance settlements from husbands from whom they wished to separate could and did use the law of necessities to their considerable advantage in this context. Of the twelve case studies of separation and divorce detailed in Lawrence Stone's *Broken lives*, four involved efforts by wives to use liability for necessary debts to force their husbands to come to terms. Charlotte Calvert reportedly amassed debts of £3,000 in her husband's name between 1705 and 1707; when he retaliated in 1709 by seizing all her goods, Calvert responded by inciting her

<sup>22</sup> Anon., *Laws respecting women*, p. 66.

<sup>23</sup> Anon., *Baron and feme*, p. 285. For other references to this case, see for example Salkeld, *Reports of cases*, p. 118.

<sup>24</sup> Anon., *Baron and feme*, p. 285. This case directly precedes that of the deserted wife of the 'ordinary working Man', serving to underline the socioeconomic distinctions to be observed in applications of the law of necessities.

<sup>25</sup> See the recent argument along these lines in D. A. Kent, 'Gone for a soldier: family breakdown and the demography of desertion in a London parish, 1750-91', *Local Population Studies*, XLV (1990), 27-42, and Pamela Sharpe, 'Bigamy among the labouring poor in Essex, 1754-1857', *The Local Historian*, XXIV, 3 (1994), 139-44.

poulterer, her mercer and her linen-draper to take her husband to court for payment of her bills for necessaries. Lady Westmeath pursued this strategy with a vengeance in 1822, and succeeded in having her estranged lord imprisoned in the King's Bench for failure to pay her debts for food, clothing, household purchases and rent.<sup>26</sup>

The case of Caroline Norton's separation from her husband is especially instructive in this context. Adduced as an example of even an affluent wife's inability to engage in economic contracts under coverture, Norton's dilemma has become a celebrated example of what Mary Poovey describes as 'the paradoxical fact that in Britain, when a woman became what she was destined to be (a wife), she became "nonexistent" in the eyes of the law'.<sup>27</sup> But the Nortons' disputes over debts are also amenable to alternative readings. For although Caroline Norton's narrative of her financial troubles rightly underlines her vulnerability when her husband ceased to pay her maintenance, it neglects to note her continued command under coverture of substantial credit even as a separated wife. Separated from her husband since 1836, Norton was entangled in debt litigation as early as 1838, but was evidently deemed creditworthy by a host of tradesmen in the following decades.<sup>28</sup> Unable to pay the bills for her various purchases in 1853, she was advised by her legal counsellors to refer her creditors to her estranged husband for payment. When a tradesman to whom Norton owed £47 for repairs to her carriage took her husband to court, a detailed examination of her mode of living ensued to determine the necessary or extravagant nature of her expenditure. Although the court ultimately dismissed the case – ruling that George Norton was not liable for the debt, because he had not been delinquent with his maintenance payments when his wife ordered the carriage repairs – Caroline Norton emerged from the court financially unscathed. Secured from imprisonment for her debts by her formal inability under coverture to contract debts at all, she was no more liable for their payment than was her husband. Understandably frustrated by her limited means, she was nonetheless

<sup>26</sup> Lawrence Stone, *Broken lives: separation and divorce in England 1660–1857* (Oxford, 1993), pp. 59, 74–6, 317. This strategy was by no means infallible, as the ambiguity of the term 'necessaries' could also be used against errant wives. Mary Dineley, impoverished in 1737 by her efforts to use the law to harry her husband John, was convicted of conspiracy and sentenced to a year's imprisonment. She retaliated by accumulating debts for maintenance at the Golden Lyon Spousing House, where she entertained her friends and visitors lavishly. The court however dismissed the case in which her jailer sought to recover the debts from John Dineley, ruling that such extravagant expenses did not constitute 'necessaries' (*ibid.* p. 102). But even less affluent women could pursue this strategy with success. Thus a woman committed by her husband to a house of correction for debauchery in 1715 succeeded in securing his arrest for debts contracted during her six-day incarceration. Robert B. Shoemaker, *Prosecution and punishment: petty crime and the law in London and rural Middlesex, c. 1660–1725* (Cambridge, 1991), p. 192.

<sup>27</sup> Mary Poovey, *Uneven developments: the ideological work of gender in Mid-Victorian England* (Chicago, 1988), p. 52.

<sup>28</sup> Poovey, *Uneven developments*, pp. 62–70 provides a lucid summary of the separation; she notes Norton's early entanglement in debt litigation on p. 67. A trade protection society alerted its members to Norton's refusal to accept liability for her debts 'as she is a *femme covert*' in 1848. *City of London Trade Protection Circular*, 6 Oct. 1848.

equipped with a repaired carriage. Her creditor, his case thrown out by the judge, had no such compensation for his incautious dealings with a married woman.<sup>29</sup>

Archival evidence and newspaper accounts demonstrate that women of less exalted status also deployed such strategies to their benefit. The records of London's Palace Court, which had jurisdiction over debts contracted within a distance of twelve miles from Whitehall, detail numerous cases in which judges and juries upheld a wife's right to pledge the credit of a husband from whom she had chosen to separate.<sup>30</sup> The acrimonious relations of Mr and Mrs Peel, both printers by trade, attest to the brutal conditions to which marriage could subject a wife, but also illustrate the law's recognition that marital brutality did constitute grounds for separation and necessary maintenance. Heard in August 1837, the case pitted Mrs Peel's landlord, Musselwaite, against Mr Peel, from whom the plaintiff sought to recover over £10 for his wife's unpaid rent. Mrs Peel's witnesses, testifying on Musselwaite's behalf, catalogued her husband's repeated violence at great length, itemizing black-eyes, bruises, beatings, adultery and abusive language that had sent Mrs Peel into fits. Ultimately driven to obtain relief from Union Hall, they claimed, Mrs Peel had exacted a magistrate's order of separation which provided for two rooms of furniture and a maintenance payment of 10s. a week from her husband, a provision which had, until he ceased payment in February, allowed her to conduct a printer's shop in her own name at a small profit. Peel's witnesses in turn sought to deflect attention from his violent behaviour, countering that his wife had conducted an adulterous affair (described in considerable detail) with a journeyman printer named Barber both within the marital home and since her departure from it. The judge's advice to the jury clearly accepted the legitimacy of the magistrate's separation order for the provision of necessary goods and services, in the event that the wife had remained chaste. 'I left it to [the] Jury if they were of opinion that Mrs Peel had not committed adultery with Barber to find a verdict for the P[la]intiff] as 10s. a week was not paid after 11 February', he noted. Thus instructed, the jury duly returned a verdict for the plaintiff, holding Peel fully liable for his estranged wife's necessary rent.<sup>31</sup>

Just as case law and legal treatises suggested that a precise social calculus should distinguish among the 'necessaries' of the commonality, the genteel and the truly great, the judges and juries of the Palace Court sought to enforce maintenance agreements suitable for wives' stations. In a case heard in 1841,

<sup>29</sup> Caroline Norton, *English laws for women* (London, 1856), in James O. Hoge and Jane Marcus (eds.), *Selected writings of Caroline Norton* (Delmar, NY, 1978), pp. 55–90.

<sup>30</sup> For the Palace Court, see W. Buckley, *The jurisdiction and practice of the Marshalsea and Palace courts, with tables of costs and charges* (London, 1827).

<sup>31</sup> *Musselwaite v. Peel*, 11 Aug. 1837, London, P.R.O., PALA 9/1/17. Significantly, this decision was rendered decades before legislation was passed giving magistrates' courts substantial powers to intervene in marital disputes. For this subsequent development, see George Behlmer, 'Summary justice and working-class marriage in England, 1870–1940', *Law and History Review*, xii, 2 (1994), 229–75.

a publican sued John Clarke, a slater, for £6 10s. 6d., the value of several weeks' board and lodging for Clarke's wife. Witnesses for the publican produced ample evidence that Clarke – 'six nights out of 7 in liquor' – posed a physical threat to his wife Eliza, and thus sought to justify her departure from his home for the Orange Tree Tavern, where she lodged at the considerable sum of a guinea a week. In an obvious effort to establish John Clarke's relative affluence, Maria Taylor, formerly the Clarkes' lodger in Chelsea, noted his possession of a 'pretty house & pretty furniture', and John Pocock, a neighbour, asserted that the husband 'seemed in good circumstances' and 'employed men' in his business. The defence, seeking to prove that the goods provided were 'not necessary articles' for persons of the Clarkes' circumstances, adduced evidence that the husband's goods had been distressed by the bailiffs, and intimated that his wife had willingly worked for her own keep at the tavern. Although the publican's brother sought to represent Eliza Clarke as a woman of leisure who 'was not a servant' and had tended the bar only 'for amusement', the jury was apparently not convinced. Upholding the wife's right to a separate maintenance from her husband, they returned a verdict for the publican plaintiff, but reduced the claim to £2 10. od., a sum more in keeping with John Clarke's rank and fortune.<sup>32</sup>

The jury's discretionary powers in cases of this kind were obviously substantial, and could operate in favour of the wife even when legal precedent pointed to a narrow, exclusionary definition of necessities. Anne Clarke, one of three daughters of a publican, had by 1838 been living with her mother and grandfather for several years since her parents' separation. Taught by the Reverend Hales, who was suing her father in the Palace Court to recover unpaid school fees, Anne and her sisters were, she testified, students not only of writing and ciphering, but also of French. The judge's annotations in his notes of the case indicate substantial disquiet as to the 'necessary' character of such instruction, and his advice to the jury provided a number of precedents for denying the husband's liability. But the jury, in the face of much of the evidence, brought a verdict for the plaintiff, who recovered from his students' father the full amount for which he had brought the suit.<sup>33</sup>

Verdicts of this sort were confined neither to the Palace Court's decisions nor to the metropolis. In 1858 the wife of a Loughborough carrier, disaffected from her husband because of his philandering, took advantage of his absence on a business trip to sell his household goods and establish herself at a new address in Birmingham. Her husband, as incapable at common law of suing his own wife as he was of suing himself, was forced to attempt to regain his property by other means. Claiming with some justice that his goods had been sold without his consent, he proceeded to sue the auctioneer who had purchased them for damages in the county court. But the judge, summing up the evidence for the jury, invoked the law of necessities. Having acknowledged

<sup>32</sup> Glazier v. Clarke, 10 Sept. 1841, P.R.O., PALA 9/1/21.

<sup>33</sup> The Rev. Hales v. Clarke, 31 Aug. 1838, P.R.O. PALA 9/1/19.

that 'a wife has no power in point of law to make a contract that will bind her husband', he constructed an extended legal analogy in which the wife's decision to secure her own maintenance through the sale of her husband's goods partook of the same implied authority on the part of her spouse as would her use of his credit merely to 'order a leg of mutton for [their] dinner.' The jury accepted this reasoning and acquitted the auctioneer who had purchased the husband's goods.<sup>34</sup> As a contemporary suit tried in Tiverton made emphatically clear, a man's liability for his partner's necessities extended to and could persist well beyond his cohabitation with her. In *Sanders versus Eames*, a joiner sued a fisherman to recover the cost of a coffin provided for the defendant's common-law wife, 'a woman named Oatway who had in this concubinage died of a dropsy'. The fisherman cited the informal status of the union in his effort to evade payment, but the judge rejected this plea out of hand, ruling definitively that 'if a man chose to live with a woman as his wife... he must... pay her debts...'<sup>35</sup>

### III

If the history of debt litigation and marital breakdown indicates that the legal disabilities of married women were less sweeping and less straightforward than the strictures of coverture might suggest, then the operation of small claims courts also reminds us that married women enjoyed more legal agency in practice than either the theory of the common law or the associated concept of separate spheres would admit. Disparate and idiosyncratic in their constitution and procedures, the various local courts that mediated small debt reclamation in the eighteenth and nineteenth centuries were governed by the internal logic of their own customs and precedents, and have in consequence garnered little attention from legal historians, captivated by the triumph of the unitary, national common law tradition. But it is in precisely such local institutions – the sheriffs' and borough courts established in the middle ages, the so-called courts of requests or courts of conscience that rose up throughout the country in the later eighteenth century, and the national system of county courts established in 1846 – that married women's debt and credit relations are most fully apparent. For while common law courts, determined to treat man and wife as a unitary legal entity embodied in the husband's person, barred women from testifying either against or on behalf of their spouses,<sup>36</sup> small claims courts, designed above all else to expedite debt collection,

<sup>34</sup> *The County Courts Chronicle*, 1 Apr. 1858, p. 83.

<sup>35</sup> *Ibid.* 1 Apr. 1858, p. 83.

<sup>36</sup> This disability flowed directly from the suspension of the married woman's legal identity under coverture. As Thomas Peake explained, 'no one can be a witness for himself; and it follows of course, that husband and wife, whose interests the law has united, are incompetent to give evidence on behalf of each other... and the law, considering the policy of marriage, also prevents them from giving evidence against each other; for it would be hard that the wife, who could not be a witness for her husband, should be a witness against him: such a rule would occasion implacable divisions and quarrels between them.' Thomas Peake, *A compendium of the law of evidence* (London, 1822 edn), pp. 169–70.

traditionally recognized and accepted the evidence of married women as their husbands' agents. Statistically, whether married or unmarried, women figured more prominently in the annals of such local tribunals than they did in the records of debt litigation in common law courts. Thus in 1844 women constituted only 4.6 per cent of debtors imprisoned by superior courts, but represented 9.3 per cent of debtors imprisoned by courts of requests.<sup>37</sup>

Established in response to the burgeoning commerce of the eighteenth century, courts of requests conventionally adhered to the forms of the common law tradition in registering suits that involved married women under the names of their husbands. But they departed significantly from the substance of the common law in accepting the active participation of wives in their deliberations. William Hutton's description of the procedures of the Birmingham court, of which he was a commissioner, drew particular attention to the agency of women. In a case detailed in his history of the court, 'Both the husbands were of [a] still character, and though their names stood in front of the cause, they did not appear, [and] had nothing to do with the trial, which was wholly conducted by their wives.' Nor was this instance an exception to the general rule. As Hutton observed somewhat wearily of wives in 1787, 'Their connexions with this Court are very frequent, and very loud, and... their fondness for speaking is a stagnation to business.'<sup>38</sup>

Troublesome perhaps to some observers, the conspicuous presence of wives in small debt litigation had an obvious practical value. An implicit recognition of married women's central role in contracting for household necessities, it allowed the plaintiff and the judges to treat directly with the person who had negotiated the original debt rather than with her husband, who was merely liable for its payment if ultimately proved in court. Although detailed minutes of small claims proceedings are extremely rare, those that do remain confirm both the utility for the court of accepting married women's testimony, and the extent to which shopkeepers conveniently ignored the strictures of coverture in their dealings with and representations of wives as consumer debtors. The clerk's minutes of the proceedings of the Hertford sheriff's court in July 1843 are a case in point. When Mary Beale, shopkeeper, sued Thomas Ellis, labourer, to recover £9 due for tea, candles, soap, sugar and drapery goods, the bulk of the evidence adduced concerned the consumer activities not of Ellis but of his wife. Susanna Whithead, who served in the shop, began her account of the Ellis's economic transactions by asserting that she knew the defendant's wife, and had habitually extended her credit. 'I generally put down in the books goods to include articles of necessaries', Whithead testified, evidently seeking to prevent the goods from being defined as luxuries, and thereby disallowed as appropriate purchases by a wife as her husband's agent. Significantly both the court clerk and the plaintiff consistently represented the

<sup>37</sup> *Ninth report of the inspectors appointed under the provisions of the Act 5 & 6 Will. IV c. 38, to visit the different prisons of Great Britain* (Parl. Papers, 1844, xv), p. 54.

<sup>38</sup> William Hutton, *Courts of requests: their nature, utility, and powers described, with a variety of cases, determined in that of Birmingham* (Birmingham, 1787), pp. 256, 294.

defendant's wife as if she were a person capable of contracting necessary debts rather than as a legal nonentity. 'Defendant's wife paid trifling sums on account', the clerk noted. 'Defendant's wife promised to pay the amount....' The terms in which Whithead described the defendant's debt are significant. Her testimony referred to Thomas Ellis's overdue account not by underlining his ultimate liability but rather by emphasizing that the 'Defendant's wife always owed Plaintiff money'.<sup>39</sup>

Creditors who sought to depict married women as persons who could owe money and enter into credit arrangements in their own right were no more capable of enforcing such supposed contracts on the women themselves in small claims courts than they were in courts of common law, for wives' ability to represent their husbands did not obviate their legal inability to contract for debts other than as their husbands' agents. But the records of small claims litigation suggest that such legal niceties were repeatedly ignored in daily practice by women anxious to purchase goods and by shopkeepers eager to dispose of their wares. A Mrs Davis, representing her husband at a small claims court in Bloomsbury in 1847, 'acknowledged her liability' for various drapery items, 'and wished the Judge to order payment by instalments, to enable her to discharge the claim unknown to her husband.' Her creditor's testimony revealed one of the many devices used by tradesmen to conceal their illicit custom with married women consumers: he issued receipts to her husband from one account book to record payments for purchases of which the husband was cognizant, and gave Mrs Davis receipts of her own from a second book 'kept for that purpose' to record payments for purchases of which her husband was unaware.<sup>40</sup>

When the courts of requests with their haphazard local traditions were struck down and supplanted with a national reticulation of county courts, members of the legal profession were anxious to bring the practices of small claims litigation into conformity with the dictates of the common law. But the new county court system, intended like the old courts of requests to speed recovery of small debts, continued to permit wives both to give evidence for their husbands and to represent them in the courtroom. In 1847, John Cowburn's *Suitors guide to the new county courts* drew attention to the particular utility of admitting wives' testimony in cases that involved the fortunes of the working class. 'It will frequently happen, that plaintiffs in the station of life of... John Workman... will have no witnesses out of his own family', he observed, 'but let this not dismay him, for the Court... has full power to examine the parties, their wives, and agents, as well as all other persons, on oath....'<sup>41</sup> Similarly Judge Ingham, addressing the first meeting of the county court at Appleby in May 1847, drew attention to the fact that in keeping with the court's intent he would prohibit attorneys' clerks from attendance, but

<sup>39</sup> Beale v. Ellis, 26 July 1843, Hertford, Hertfordshire County Record Office, Hertford sheriff's court records, SH3/2/2.

<sup>40</sup> *The County Courts Chronicle*, 1 Sept. 1847, p. 63.

<sup>41</sup> John Cowburn, *The suitor's guide to the new county courts: being a plain and familiar exposition of the act and rules of practice* (London, 1847), pp. 10-11.

'did not mean to exclude the wives... of parties who could not afford to attend themselves'.<sup>42</sup>

For the labouring population in particular, a wife's ability to act as her husband's agent conspired with her inability to contract for credit on her own behalf to create a succession of legal tactics for the evasion of the family's unpaid debts.<sup>43</sup> The process of serving the summons to appear at court was the first of these strategic moments. Because a wife's legal identity was, under coverture, caught up in that of her husband, a summons for the husband to appear in court could, in his absence, be served on him vicariously, through its service on his wife. But because the wife's actual body was often far removed from her husband's physical presence, county court judges were often reluctant to treat a summons on the wife as if it were indeed a summons served on the husband. Mrs Davies of Pembrokeshire, the wife of a worker 'in greatly reduced circumstances', was only one among many married women who benefited from – and clearly manipulated – this ambiguity in her legal status. Having received a court summons for her husband while he was out of town, she neglected to produce it upon his return, 'as he was in so low and desponding a condition, that she was afraid to mention the subject to him'. Her husband's subsequent departure for Liverpool and Bristol to seek employment, she later claimed in court, had prevented her from transmitting the summons to him. The presiding judge, clearly unwilling to treat husband and wife as a single legal entity in the face of their palpably distinct physical and geographical existence, repeatedly adjourned the case rather than proceeding forthwith to rule against the husband for his non-appearance, as he was entitled to do at law.<sup>44</sup>

But it was when married women did appear in the county courts as their husbands' deputed agents to negotiate small debt claims that their strategic utility was particularly evident. Here a reading of court documents that mistakes the forms of coverture for the norms of county court practice can be profoundly misleading. For while county court clerks entered all cases involving married litigants under the husband's name, the judges and registrars they served dealt in court with husband and wife alike. Statistics from the Boston county court indicate the significance of this disjuncture between legal theory and social practice. An initial search for female defendants among 400 sampled plaints entered in the court books for 1849 yields only twenty female defendants – all necessarily either spinsters or widows – a figure which suggests that only 5 per cent of all defendants appearing in the court were likely to be women, and thus which underlines

<sup>42</sup> *The County Courts Chronicle*, 1 June 1847, p. 7.

<sup>43</sup> The broader, extra-legal context of working-class wives' negotiations of family debts in a slightly later period is detailed by Ellen Ross, *Love and toil: motherhood in outcast London, 1870–1918* (New York, 1993), esp. pp. 40–55. Her one reference to wives' interaction with the county courts concerns a married woman's defiance of a debt collector's efforts to enforce a county court judgement against her husband. Repeatedly sent threatening letters by the agency, she tore them into strips and distributed them to her spouse as pipe lights (p. 81).

<sup>44</sup> *The County Courts Chronicle*, 1 June 1847, p. 4.



married women's exclusion from the public sphere under coverture. But an analysis of the 178 cases from this sample that were actually heard by the judge – that is, of those plaintiffs in which the litigants failed to settle out of court – provides a very different picture of the sexual composition of the courtroom. For in addition to the thirteen spinsters and widows who appeared on their own behalf, forty-one wives now appeared as agents on behalf of their husbands. The proportion of women who appeared to defend actions in the court was thus not 5 per cent, as suggested by the initial survey of plaintiffs entered in the court books, but rather 30 per cent, and the great majority of these female litigants were married women. Subtracting the thirteen spinsters and widows from this cohort leaves 165 male defendants, a full quarter of whom were represented by their wives. Labourers were, not surprisingly, the occupational group most likely to dispatch their wives to the court: over 50 per cent of their defended cases were defended by their wives.<sup>45</sup> Court records from other regions corroborate this picture of female activity in the nation's debt courts. Of the 314 defended cases heard in January, February and March 1850 at the Bow county court, which served the working-class district of West Ham and Limehouse, fifty-seven (18 per cent) were defended by wives.<sup>46</sup>

Beyond preventing men from losing a day's employment through enforced attendance at the county court, the appearance of wives as their husbands' agents evidently enlarged the potential for a negotiated settlement between the defendant and the judge. Themselves not legally liable for the debts in litigation, married women were especially well placed to emphasize the economic innocence and impotence of a husband's dependants, just as they were (by virtue of received conventions of gender) well equipped to discuss the parlous state of a family's domestic expenditure, and often adept at crafting emotive pleas for lenient judgements. When the reverend Marcus, a clergyman who kept a school in Bloomsbury, was sued for a debt of £12 in 1847, he dispatched his wife, 'a distressed-looking female', to represent his case in the county court. Attempting to negotiate repayment of the debt in instalments, Mrs Marcus, weeping, predictably drew the court's attention to her husband's inability even to provide her with necessities suited to his station. 'He could not have paid it', she insisted of the debt, 'look at my garb for the wife of a clergyman.'<sup>47</sup>

County court judges were not immune to the pressures and the logic of such reasoning. In Boston's county court, 140 defendants stood trial in four sampled months in 1850; seventy-two (51 per cent) of these debtors chose to represent themselves, while thirty-nine (28 per cent) were represented by their wives.

<sup>45</sup> Boston County Court Book, 1849–51, Lincoln, Lincolnshire Record Office (L.R.O.), AK16/4. The sampled months were March, June, September and December 1849. There were 67 labourers among the 165 male defendants, of whom 13 represented themselves and 16 were represented by their wives. (The remaining labourers failed to enter an appearance at all, thus rendering a judgement in favour of the plaintiff all but inevitable.)

<sup>46</sup> Bow county court plaintiff and minute book, 1849–51, London, Greater London Record Office, CCT/AK 15/4. A total of 69 cases (22 per cent) were defended either by wives or by other female relatives.

<sup>47</sup> *The County Courts Chronicle*, 1 Nov. 1847, p. 119.

Here the testimony of a wife appears if anything to have served to mitigate the severity of sentences meted out by the judge. The seventy-two men representing themselves were allowed to pay their debts in instalments rather than in a single lump sum in forty-four (61 per cent) of their cases, but men represented by their wives obtained instalment payments in thirty-four (87 per cent) of the suits in which they appeared. Only one wife received a judgement requiring that the full debt be paid forthwith; eleven men representing themselves received such a judgement.<sup>48</sup> Present, conspicuous and active in the county courts, married women evidently functioned as effective defendants in small debt litigation despite the legal disabilities of coverture.

Although wives were in practice more likely to represent their husbands as defendants than as plaintiffs, they were not incapable of prosecuting recalcitrant debtors in the county courts. At Boston in 1849, fifteen (9 per cent) of the 165 men in the sample whose suits were heard were represented in their capacity as plaintiffs by their wives. Their numbers included a beerseller, a general dealer, a drover, a huckster, a labourer, a sailor, a soldier, two shoemakers, two bakers and a shopkeeper – 15 per cent of all shopkeepers' cases in this sample, indeed, were litigated by a shopkeeper's wife.<sup>49</sup> Nor was Boston exceptional in this regard. When John Hargreaves sued James Atkinson for £2 in the Clitheroe county court, for example, both plaintiff and defendant were represented by their wives, who had themselves in all likelihood been the active agents in negotiating the original debt, which was for grocery items.<sup>50</sup> Like the wives who had earlier appeared in the courts of requests, married women county court litigants soon acquired a public profile that contrasted sharply with their status as legal nonentities under the common law. Within the first few months of his tenure, a judge presiding at Dartford, Kent had been compelled to commit the wife of a defendant to custody 'for insolence... and creating a disturbance in the court'.<sup>51</sup>

#### IV

In writing the history of married women's property in the eighteenth and nineteenth centuries, women's historians have, rightly, emphasized the obstacles posed to female achievement in the public sphere by the mechanisms of the common law. In doing so they have succeeded in describing broad and pervasive structural forces that impeded married women's economic activity, and have helped to identify powerful incentives that propelled Victorian activists towards female emancipation. But an exclusive emphasis on the disabling purchase of coverture can also obscure the ways in which English women, at times assisted by English men, succeeded in suppressing, subverting,

<sup>48</sup> Boston County Court Minute Book, 1849–51, L.R.O., AK16/4. The sampled months were Jan., April, July and Oct. 1850.

<sup>49</sup> *Ibid.* Of the 26 shopkeepers' cases heard by the judge in Mar., June, Sept. and Dec. 1849, 22 were litigated by male shopkeepers, and 4 by a shopkeeper's wife.

<sup>50</sup> Clitheroe county court: list of causes, 20 July 1847, Preston, Lancashire Record Office, CYC/1/29.

<sup>51</sup> *The County Courts Chronicle*, 1 July 1847, p. 24.

eroding and evading the strictures of the common law. The law of necessities was one component in wives' economic armoury, allowing many women a degree of authority and discretion in their purchases of household and drapery goods. Certainly, the economic and legal status of women as a group was low relative to that of men. But together the expansion of the consumer market and the improvements in transportation that marked the later eighteenth and nineteenth centuries served to increase married women's opportunities to exploit the law of necessities: as supply, demand, income levels and social pretensions rose in this period, the extent of this vicarious purchasing power may well have risen, even as women's formal control over property suffered a significant decline.

The local small claims courts that proliferated from the mid-eighteenth century, moreover, offered women an extensive economic arena in which they had an accepted, if muted, legal voice. In small debt litigation – as in the eighteenth-century criminal courts analysed by John Beattie – female defendants (testifying, in this instance, as their husbands' agents rather than on their own behalf) may have enjoyed greater leniency from judges and juries than did men.<sup>52</sup> Certainly, affluent and impecunious defendants alike were wont to invoke their wives' testimony in small claims litigation. Here the celebrated case of Caroline Norton is again instructive. Norton herself instanced her husband's trial for her debts as a paramount example of wives' legal annihilation under coverture, a judgement echoed in the received interpretation of her subsequent campaign as an effort 'to punish the men who would not let her speak'.<sup>53</sup> But precisely because her carriage-maker sued her husband in a county court (rather than at common law), Caroline Norton was – against her own inclinations – empowered to provide testimony at the trial in her husband's defence. Admonished ineffectually by the judge to sit down and stick to the point, she succeeded in repeatedly thrusting her grievances upon the consciousness of the court. 'I am here for justice', she proclaimed indignantly at the outset of the extended harangue on her marital history which she delivered to an applauding audience, 'and as this is a court of justice, I insist upon stating what I have to say.'<sup>54</sup>

The value of the individual debts contested in small claims courts was of course relatively modest, and viewed from this perspective it is possible to interpret wives' ability to litigate only in small claims courts as further evidence of their limited economic powers under coverture. But this is at best a partial view, for the number of cases heard in courts of requests and county courts far surpassed the volume of litigation in the courts of common law. Nor were the aggregate sums contested in small claims courts inconsiderable. In

<sup>52</sup> In his analysis of crimes against property, Beattie finds that women were not only less likely to be convicted than men, but also that convicted women were more likely than men both to have their charge reduced and to be reprieved. J. M. Beattie, *Crime and the courts in England 1660–1800* (Princeton, 1986), p. 438.

<sup>53</sup> Poovey, *Uneven developments*, p. 68.

<sup>54</sup> *The County Courts Chronicle*, 1 September 1853, pp. 113–14. Norton's account with her coachmaker had extended from 1843 to 1850, a circumstance that suggests her considerable ability to command credit despite her marital difficulties (*ibid.* p. 113).

the first ten years of their operation, the county courts settled 4,600,000 suits in which plaintiffs sought payments valued at a total of £14,500,000.<sup>55</sup> The expansion of the county court system in the later nineteenth century ensured that the courts' impact was widely felt. As Philip Jenkins has suggested, 'the face of law most commonly visible to the working classes of Victorian England', was in all likelihood neither the gallows nor the treadwheel, but rather 'the county courts and their role in debt-enforcement'.<sup>56</sup> Paul Johnson's recent assessment of the operation of the Victorian county courts rightly underlines the extent to which they instantiated class differences, identifying 'the differential treatment meted out to debtors from different classes' as 'perhaps the clearest example of the laws and institutions of the market being driven by value judgements about the worth of the middle class and the fecklessness of workers'. This analysis, derived from middle- and upper-class debtors' ability to avoid full repayment of their debts by availing themselves of bankruptcy procedures, depicts the county courts as successful mechanisms for subjecting impecunious workers to middle-class morality.<sup>57</sup> But an understanding of women's involvement in negotiating debts in the county courts suggests that the imposition of middle-class conceptions of economic probity was achieved only at the price of attenuating parallel middle-class notions of gender difference. Only by allowing wives to exert a degree of economic authority were the county courts successful in enforcing labourers' quotidian debts.

Like the settlement of marital disputes after the passage of the Divorce Act of 1857, recently analysed by A. James Hammerton, the history of small claims litigation 'raises basic questions about the way feminism was shaped by the ordinary experience of women's "private" lives, which are usually seen as separate from the more "public" political campaigns'. In this pragmatic context, as Hammerton concludes, the 'boundaries between private and public spheres... appear to be shifting and indistinct, rather than fixed and immutable'.<sup>58</sup> It is fitting in conclusion to return to Millicent Fawcett's celebrated recollection of her experiences in a London criminal court in the 1870s. The reaction of an educated, affluent, cosmopolitan and politically astute observer of her times, Fawcett's outrage at her exclusion from the legal

<sup>55</sup> The case load of courts of requests was two to three times greater than that of London's superior courts in the early nineteenth century. See C. W. Brooks, 'Interpersonal conflict and social tension: civil litigation in England, 1640-1830', in A. L. Beier, David Cannadine, and James M. Rosenheim (eds.), *The first modern society: essays in English history in honour of Lawrence Stone* (Cambridge, 1989), p. 374. For the county court statistics, see *The County Courts Chronicle*, 1 Apr. 1858, p. 73.

<sup>56</sup> Philip Jenkins, 'Into the upperworld?: law, crime and punishment in English society', *Social History*, xii, 1 (Jan. 1987), 96.

<sup>57</sup> Paul Johnson, 'Class law in Victorian England', *Past and Present*, no. 141 (Nov. 1993), pp. 157-8. While county court debtors were legally obliged to pay their debts in full, debtors owing more substantial sums could file for bankruptcy, and thus avoid both the seizure of their goods or persons and the full repayment of their debts. See *ibid.* pp. 159-60.

<sup>58</sup> A. James Hammerton, *Cruelty and companionship: conflict in nineteenth-century married life* (London, 1992), p. 6.

record was fed by her early engagement with the politics of feminism. But it was also, one might surmise, informed by her sudden perception of the state of suspended animation that characterized her legal identity under coverture, her realization not merely of the abstract injustice but also of the actual discrepancy between, on the one hand, the stark definition of her legal nonentity in the theory of the common law and, on the other, the palpable reality of her habitual, vital economic activities in the practice of her daily life. To attend to only one of these two strands of female experience is to ignore the strategies and devices that allowed both men and women to experience, promote and even enjoy the commercialization of English society in the eighteenth and nineteenth centuries.