A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill

Date: 1855
Author: Caroline Norton
Genre: Pamphlet (Excerpts)

Summary Overview

In England (and much of the English-speaking world), one of the obstacles to equality for women, in terms of economic freedom as well as the freedom to dissolve a marriage, was something called "coverture." Coverture is a principle in English Common Law, which holds that a married woman's legal identity becomes one with her husband's upon getting married. What this means, in practical terms, is that a married woman may not own property, enter into legal agreements, or have independence outside the will of her husband. This concept was a limiting factor for women in England, as was the absence of any divorce process that was accessible to women.

In the mid-1800s, writer and activist Caroline Norton underwent a series of very public struggles with regard to her failing marriage. Her experiences with the legal system and the press inspired her to advocate for substantive change in a number of areas of what today we would call "family law." This excerpt from her 1855 "A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill" lays out her argument for greater freedom for women within marriages and in ending marriages.

Caroline Norton, portrait by George Hayter (1832). Image via Wikimedia Commons. [Public domain.]

Defining Moment

The events that befell Caroline Norton following her separation from her husband George, and that led to her advocating for new laws, illustrate the ways in which women in 19th century Britain were at a legal and financial disadvantage compared to men. Norton's husband was legally able to take possession of her income as a writer after they separated and, shortly after the separation, George told Caroline that he believed she was having an affair with Lord Melbourne, her close friend who was also the prime minister. Because of a legal principle called "criminal conversation" ("conversation" was a euphemistic term for sexual intercourse), Norton sued Lord Melbourne in court, seeking thousands of pounds for the damage supposedly done to his marriage and reputation. As the jury heard testimony from household servants about their suspicions on the affair, Caroline Norton found herself at the center of a humiliating scandal. Though the jury did not find that adultery had taken place, Norton's life was turned upside down. George

had taken her children from her, and she had no legal right to challenge that. Norton composed a pamphlet in 1837, "The Natural Claim of a Mother to the Custody of her Children as affected by the Common Law Rights of the Father," challenging the law. She began publicly advocating for a change in the law, which came in 1839 with the Custody of Children Act. In another conflict with George, it was ruled that married women were not able to enter into legally binding contracts. Unable to legally divorce, and seemingly unable to live an independent life separated from George, Caroline Norton penned her 1855 Letter to the Queen, arguing in favor of a Divorce Bill that had failed in Parliament the year before.

Author's Biography

Caroline Norton. writer and social reformer, was born Caroline Sheridan in London in 1808. After her father's death in 1817, Sheridan's family was nearly destitute. However, through family friends she, her sisters, and mother were able to live at Hampton Court Palace and interacted with numerous members of the British aristocracy. Sheridan's two sisters each married Dukes while Caroline married George Norton, a member of Parliament. Caroline Norton was unhappy in the marriage, as George was subject to alcohol-fueled rages and his failing law career led to financial stresses. Norton became friends with a number of prominent figures including writer Mary Shelley and future Prime Minister Benjamin Disraeli and she began to write as well.

Caroline Norton left her husband in 1836. She earned money from her writing, but George confiscated these, claiming he had a right to them, to which the courts agreed. Caroline, having no other resources, went into debt to live, but the debt was legally in her husband's name. George took their two sons, without her consent, and sent them to live with relatives in Scotland. Soon, a scandal surrounding Caroline would erupt, leading her to engage in political advocacy for the legal rights of women.

Queen Victoria, portrait by Alexander Melville, 1845. Image via Wikimedia Commons. [Public domain.]

Historical Document

A married woman in England has *no legal existence:* her being is absorbed in that of her husband. Years of separation of desertion cannot alter this position. Unless divorced by special enactment in the House of Lords, the legal fiction holds her to be *"one"* with her husband, even though she may never see or hear of him.

She has no possessions, unless by special settlement; her property is *his* property. Lord Ellenborough mentions a case in which a sailor bequeathed "all he was worth" to a woman he cohabited with; and afterwards married, in the West Indies, a woman of considerable fortune. At this man's death it was held, notwithstanding the hardship of the case, that the will swept away from his widow, in favour of his mistress, every shilling of the property. It is now provided that a will shall be revoked by marriage: but the claim of *the husband* to all that is his wife's exists in full force. An English wife has no legal right even to her clothes or ornaments; her husband may take them and sell them if he pleases, even though they be the gifts of relatives or friends, or bought before marriage.

An English wife cannot make a will. She may have children or kindred whom she may earnestly desire to benefit; she may be separated from her husband, who may be living with a mistress; no matter: the law gives what she has to him, and no will she could make would be valid.

An English wife cannot legally claim her own earnings. Whether wages for manual labour, or payment for intellectual exertion, whether she weed potatoes, or keep a school, her salary is *the husband's*; and he could compel a second payment, and treat the first as void, if paid to the wife without his sanction.

An English wife may not leave her husband's house. Not only can he sue her for "restitution of conjugal rights," but he has a right to enter the house of any friend or relation with whom she may take refuge, and who may "harbour her," as it is termed, and carry her away by force, with or without the aid of the police.

If the wife sue for separation for cruelty, it must be "cruelty that endangers life or limb," and if she has once forgiven, or, in legal phrase, *"condoned"* his offences, she cannot plead them; though her past forgiveness only proves that she endured as long as endurance was possible.

If her husband take proceedings for a divorce, she is not, in the first instance, allowed to defend herself. She has no means of proving the falsehood of his allegations. She is not represented by attorney, nor permitted to be considered a party to the suit between him and her supposed lover, for "damages." Lord Brougham affirmed in the House of Lords:

> *"in that action the character of the woman was at immediate issue, although she was not prosecuted. The consequence not unfrequently was, that the character of a woman was sworn away; instances were known in which, by collusion between the husband and a pretended paramour, the character of the wife has been destroyed. All this could take place, and yet the wife had no defence; she was excluded from Westminster-hall, and behind her back, by the principles of our jurisprudence, her character was tried between her husband and the man called her paramour."*

If an English wife be guilty of infidelity, her husband can divorce *her* so as to marry again; but she cannot divorce the husband *a vinculo,* however profligate he may be. No law court can divorce in England. A special Act of Parliament annulling the marriage, is passed for each case. The House of Lords grants this almost as a matter of course to the husband, but not to the wife. In only four instances (two of which were cases of incest), has the wife obtained a divorce to marry again.

She cannot prosecute for a libel. Her husband must prosecute; and in cases of enmity and separation, of course she is without a remedy.

She cannot sign a lease, or transact responsible business.

She cannot claim support, as a matter of personal right, from her husband. The general belief and nominal rule is, that her husband is "bound to maintain her." That is not the law. He is not bound to *her.* He is bound to his country; bound to see that she does not cumber the parish in which she resides. If it be proved that means sufficient are at her disposal, from relatives or friends, her husband is quit of his obligation, and need not contribute a farthing: even if he have deserted her; or be in receipt of money which is hers by inheritance.

She cannot bind her husband by any agreement, except through a third party. A contract formally drawn out by a lawyer, witnessed, and signed by her husband, is *void in law*; and he can evade payment of an income so assured, by the legal quibble that "a man cannot contract with his own wife."

Separation from her husband by consent, or for his ill usage, does not alter their mutual relation. He retains the right to divorce her *after* separation, as before, though he himself be unfaithful.

Her being, on the other hand, of spotless character, and without reproach, gives her no advantage in law. She may have withdrawn from his roof knowing that he lives with "his faithful housekeeper": having suffered personal violence at his hands; having "condoned" much, and being able to prove it by unimpeachable testimony: or he may have shut the doors of her house against her: all this is quite immaterial: the law takes no cognisance of which is to blame. As *her husband*, he has a right to all that is hers: as *his wife*, she has no right to anything that is his. As her husband, he may divorce her (if truth or false swearing can do it): as his wife, the utmost "divorce" she could obtain, is permission to reside alone, married to his name. The marriage ceremony is a civil bond for him, and an indissoluble sacrament for her; and the rights of mutual property which that ceremony is ignorantly supposed to confer, are made absolute for him, and null for her.

Of course an opposite picture may be drawn. There are bad, wanton, irreclaimable women, as there are vicious, profligate, tyrannical men: but the difference is *this:* that to punish and restrain bad wives, there are laws, and very severe laws (to say nothing of social condemnation); while to punish or restrain bad husbands, there is, in England, no adequate law whatever. Indeed, the English law holds out a sort of premium on infidelity; for there is no doubt that the woman who is divorced for a lover and marries him, suffers less (except in conscience) than the woman who *does not deserve to suffer at all* the wife of a bad husband, who can inflict what he pleases, whether she remain in her home, or attempt to leave it.

Such, however, is "the law": and if anything could add to the ridicule, confusion, and injustice of its provisions, it would be the fact, that though it is law for the rich, it is not law for the poor; and though it is the law in England, it is not the law in Scotland!

It is not law for the poor.

Since the days of King Henry VIII., for whose passions it was contrived, our method of divorce has remained an indulgence sacred to the aristocracy of England. The poorer classes have no form of divorce amongst them. The rich man makes a new marriage, having divorced his wife in the House of Lords: his new marriage is legal; his children are legitimate; his bride occupies, in all respects, the same social position as if he had never previously been wedded. The poor man makes a new marriage, *not* having divorced his wife in the House of Lords; his new marriage is null; his children are bastards; and he himself is liable to be put on his trial for bigamy: the allotted punishment for which crime, at one time was hanging, and is now imprisonment. Not always offending knowingly, for nothing can exceed the ignorance of the poor on this subject; they believe a Magistrate can divorce them; that an absence of seven years constitutes a nullity of the marriage tie; or that they can give each other reciprocal permission to divorce: and among some of our rural populations,

the grosser belief prevails, that a man may legally *sell* his wife, and so break the bond of union! They believe anything, rather than what is the fact, viz., that *they* cannot do legally, that which they know is done legally in the classes above them; that the comfort of the rich man's home, or the indulgence of the rich man's passions, receives a consideration in England which the poor need not expect to obtain.

It is not the law of Scotland. In your Majesty's kingdom, nothing but The rapid running of the silver Tweed"divides that portion of the realm where women are protected by law, from that portion where they are *un*protected, though living under the same Sovereign and the same government!

When, in Queen Anne's reign, the legislative union of Scotland was completed, the laws relating to trade, customs, and excise, were assimilated to those of England; but other laws remained untouched; and in nothing is there a larger difference than in all matters relating to marriage, divorce, and legitimation of children.

In Scotland, the wife accused of infidelity defends herself as a matter of course, and as a first process, instead of suffering by the infamous English action for "damages," where she is not allowed to interfere, though the result may be to ruin her.

In Scotland, the property of the wife is protected; rules are made for her "aliment" or support; and her clothes and "paraphernalia" cannot be seized by her husband.

In Scotland, above all, the law *has* power to divorce *a vinculo*, so as to enable *either* party to marry again; and the right of the wife to apply for such divorce is equal with the right of the husband; that license for inconstancy, taken out under the English law by the English husband, as one of the masculine gender, being utterly unknown to the Scottish courts.

Glossary

a vinculo: in terms of divorce, a divorce that is final as opposed to a legal separation

cognisance: awareness or recognition

profligate: wasteful, sexually promiscuous

shilling: small unit of currency in England

Document Analysis

Norton describes the degree to which women are legally and financially connected to their husbands, going so far as to describe the condition as having "no legal existence." This cannot change unless the couple is divorced and divorce is impossible without a "special enactment in the House of Lords." This is the case even if the husband has abandoned his wife. She then provides an anecdote to illustrate the hardship this system inflicts on women. Norton then outlines the limits on a woman's freedom within marriage. Women cannot make wills. They are not legally entitled to the money that they earn—that money belongs to the husband. A married woman cannot leave her own home without her husband's permission and, if she does, he may bring her back by force and even involve law enforcement. Women were allowed to separate from their husband on the grounds of "cruelty," but here Norton breaks down exactly what the law requires: the cruelty must be life-threatening and if the wife has endured the treatment—interpreted as condoning it—it does not count.

In the case of the husband seeking a divorce, the wife is not allowed to defend herself against charges of adultery. In fact, she is not legally involved at all: the legal case is entirely between the husband and the wife's alleged lover. The quotation from Lord Brougham regarding the way in which this legal process ruined a woman's reputation reflects Norton's own experiences when her husband sued Lord Melbourne. Further, while a husband can divorce an adulterous wife and marry again, a woman cannot likewise divorce a husband, due to the fact that only a special Act of Parliament can authorize a divorce. Here, Norton cites the small number of women who have ever successfully sought such an Act from Parliament.

The married woman's dependence on her husband extends to lawsuits and contracts—a wife cannot sue, cannot sign a lease, or conduct any sort of business. Husbands are not, contrary to what people may think, legally required to support their wives, she explains. A woman cannot even enter into a contract with her own husband. If they separate, the husband can continue to behave poorly and retain his legal right to seek a divorce through Parliament. Norton laments that a woman does not have this option even if she is "of spotless character." Her morality has no legal benefit to her. The core problem is that for the husband, the marriage is a "civil bond" and for the wife it is an "indissoluble sacrament." What Norton means by this is that for men, a marriage is something that can be dissolved through governmental and legal procedures. While it may be expensive and complicated, it is possible. For women, that is not the case; it is a religious vow that cannot be broken.

Norton does acknowledge that immoral wives exist, however, there are numerous laws to "punish and restrain" bad wives while there are no such laws for bad husbands. Here, Norton points out the fundamental injustice: that the system of laws relating to marriage serve to oppress wives. Further, the legal basis for divorce—and Act of Parliament—is an aristocratic relic from the days of Henry VIII in the 16th century, designed for the wealthy. The poor have no options for divorce. Crucially, however, the law is different in Scotland. There, a woman can defend herself in court, her property is protected, and the law grants the ability to "divorce a vinculo," which means a divorce that is completely and finally ended, rather than being a separation. Further, women have equal rights to apply for a divorce. Norton protests that it is illogical for the law to be different in Scotland than it is in England, since both countries are part of the United Kingdom and under the authority of the same monarch. Why, when England and Scotland were joined together were only laws and regulations "relating to trade, customs, and excise" made uniform while others, such as divorce were not?

Essential Themes

Caroline Norton's letter to Queen Victoria, from which this selection is excerpted, runs to over 30,000 words. It is an eloquent appeal for extensive reform of marriage and divorce laws in England. Norton makes two compelling, yet distinct arguments. First, Norton illustrates the fundamental inequality and injustice of the present system. It is unjust in the way that it gives men all the benefits of the legal system while depriving women of their earnings, their reputations, and

even their children. It is also unjust in that it is a system developed and maintained primarily for the benefit of the wealthy. Second, Norton argues that the vast differences in the laws concerning divorce between England and Scotland is ridiculous considering the fact that they are both within the same kingdom.

Norton's pleas would bear fruit. Within a few years of her treatise appearing, support would grow for reform in divorce laws. The new government of Prime Minister Lord Palmerston would reintroduce legislation to create a divorce court in 1856 and, this time, the bill would be passed into law as the Matrimonal Causes Act of 1857.

—Aaron Gulyas, MA

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