1. DIVORCE

You never really know a man until you have divorced him.

Zsa Zsa Gabor

I don't remember the day or the month, but I do remember where I was: a sushi bar in the Westfield Stratford shopping centre in East London. I was not yet thirty. I had just realised that I didn't want to be married any more, and I had finally told someone: my best friend Laura. There was only one problem. *How do you get divorced?*

After a few minutes of intensive googling, we found three relatively fast grounds: desertion, unreasonable behaviour or adultery. All of these involved one partner accepting the blame for the collapse of the marriage. If you wanted to get divorced without it being anyone's fault, you had to be separated for two years – or five years, if your partner contested the decision.

At the time, I was a twentysomething middle-class white woman with a degree and a magazine column; pretty much every characteristic which gives you sharp elbows and a sense of entitlement. My job had management responsibilities: half a dozen people reported to me, and I occasionally sent emails asking them to 'revert to me on that'. And yet I had entered a legal contract without bothering to discover how to get out of it.

I was extremely lucky – my now ex-husband is nothing but a gentleman, and we exited the relationship and the legal contract with as much dignity and as little friction as the situation allowed, helped by a lack of assets or children. But what I did in 2013 is something that the vast majority of women in history could only dream of doing, because getting divorced means something particular for women. It means that society considers you a full citizen, a person in your own right.

If I had my way, the history of divorce law would be as well

known as the fight for gay marriage. Before the Married Women's Property Act in 1870, a woman's legal status changed at the altar, from 'feme sole' (Norman French for 'single woman') to 'feme covert' (a covered, or married, woman). She could no longer own property, sue or be sued, earn money of her own, execute a will or sign contracts. It took until 1926 before English women could own property on the same terms as men.

Under the traditional definition of marriage, there was 'marital unity' but not equality: a woman was a dependant with the same legal status as a child. As the English judge William Blackstone wrote in 1765: 'By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing.' A man could not grant anything to his wife, Blackstone added, because 'the grant would be to suppose her separate existence'.

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Seventy years later, a woman called Caroline Norton made a similar observation. 'A woman has apparently no individual destiny,' she wrote in 1836. 'She is the property of those on whom she may reflect discredit.' Her husband George was refusing to agree a financial settlement which would have guaranteed their legal separation. During the marriage, he had beaten her so badly their servants had to intervene. After it broke down, he sold off her possessions and withheld access to their children. When she still refused to reconcile with him, he put her on trial for adultery – accusing her of sleeping with her old friend Lord Melbourne, the prime minister. The publicity around the trial exposed Victorian marriage as a form of ownership.

By all accounts, Caroline Norton was a lively, gregarious woman. She was friends with writers and thinkers; she wrote novels herself. Charles Dickens described her and her sister as 'sights for the gods';

the artist Edwin Landseer had a crush on her. Her husband George, by contrast, was a failure as a solicitor and as a person. He vented his resentment on his witty, popular wife. He initially encouraged her friendship with Lord Melbourne, reasoning that it would lead to jobs and favours, but then he got jealous. This is a known hazard when men feel they 'own' women, and try to control their bodies or brains to make money.* And so George put his wife on trial for adultery.

In *The Criminal Conversation of Mrs Norton*, the historian Diane Atkinson outlines the sexist dimensions of the case against Caroline. Her adultery would mean her husband was denied the 'domestic harmony and affections' to which he was entitled under the law. Effectively, George had exclusive rights to his wife's vagina, purchased through the marriage contract. Depriving him of that was an offence so serious that he asked for £10,000 – a million pounds today – in damages. The lawyers, judge and pamphleteers covering the case were all male; the only women involved were Caroline Norton's servants, who were called to testify against her. Caroline never went to court; she was hiding at her mother's apartment in Hampton Court Palace.

The lead counsel for George Norton, Sir William Follett, promised to air the couple's dirty linen in public – literally. Where the 1990s had Monica Lewinsky's blue dress, stained with Bill Clinton's semen, the 1830s had Caroline Norton's gown. According to Follett, it would show 'those marks which are the consequence of intercourse between the sexes'. One of her maids was summoned to testify that Caroline applied rouge before Lord Melbourne's visits. A coachman told the court that he had seen Caroline lying on the floor, exposing the 'thick part of her thigh' with the prime minister sitting on a chair nearby; the man was attacked by Melbourne's legal team

* Parts of Caroline's story remind me of Jenna Jameson's description of 'suitcase pimps', the boyfriend/managers of porn actresses, who veer between seeing their partners as meal tickets and resenting their stardom.

as a drunk with a grudge. (The defence relied heavily on the alleged untrustworthiness of servants when making its case.) The Attorney General Sir John Campbell argued that the Nortons were still sleeping together after the alleged adultery had taken place, when 'everyone knew that after a woman surrendered her person to a paramour, she looked down upon her husband with loathing and abhorrence'. After a trial in 1836 lasting nine days, the verdict came back at 11.40 p.m. – the jury ruled against George Norton. There would be no damages for him.

Caroline Norton's reputation, however, was stained for ever. There was no doubt that she had flirted with other men, including Lord Melbourne, even if she had not slept with them. Just as bad, the court case made it *harder* for her to obtain a divorce. She was now officially innocent of adultery, so she would have to prove that *George* had slept with someone else if she wanted a legal separation. 'They were stuck with each other until one of them died,' writes Atkinson. 'Estranged and living apart from her husband, Caroline had no automatic right to see her children, and he was immovable on that point. Caroline would not be able to change his mind, so she set about changing the law.'

In a way, we should thank George Norton. He seems to have been such a spherical bastard* that most of polite society quietly took Caroline's side. 'My husband is fond of paying me the melancholy compliment, that to my personal charms, and not to the justice of my cause, I owe, that all concerned in these wretched affairs take my part against him,' she wrote. Caroline was certainly the brains of the couple. When George claimed that she had no right to keep her own money, she began running up bills – then telling creditors to sue her husband.

Once the court case was over, Caroline wrote to the novelist

* The phrase comes from the Swiss physicist Fritz Zwicky, to describe people who are bastards no matter which way you look at them.

Mary Shelley, daughter of the feminist pioneer Mary Wollstonecraft, that she was angry at how 'a woman is made a helpless wretch by these laws of men'. The trial had made her a celebrity, in the most unpleasant modern sense. She was written about in newspapers, and parodied in cartoons, but unable to speak for herself. Unable to see her own sons – seven-year-old Fletcher, five-year-old Brinsley and three-year-old William Charles – she worried that her husband would treat the younger ones badly if he believed them to be Melbourne's children. She was asking, effectively, for joint custody; to see the boys for half their school holidays rather than the occasional hour sanctioned by her husband. Her requests were denied. When the boys were in London, she hung around St James's Park, hoping to see them. Once, when George was not at home, she managed to convince a footman to let her into the house. But in August, he took the boys to stay with his sister Grace in Scotland; Caroline went down to the wrong docks and missed waving them goodbye. When the children arrived at Grace's house, she beat the eldest, Fletcher, for reading a letter from Caroline. As a punishment for some small infraction, Brinsley was stripped naked, tied to a bedpost and whipped. George was using access to the children as a weapon against Caroline. He was punishing her for being 'difficult': for disobeying him, for flirting with other men, for exposing him to ridicule.

Throughout her unhappy marriage, Caroline had contributed to the family finances by writing novels with titles like *The Sorrows of Rosalie* and *The Undying One*. Now, she turned to producing pamphlets about her situation. 'I think it is high time that the law was known at least, among the "weaker" sex, which gives us no right to one's own flesh and blood,' she wrote to Mary Shelley. She was advised by her sister Georgy not to make her pamphlets too angry, but she worried that moderation and politeness made them sound weak.

In her second treatise on custody laws, Norton exposed how children were used as pawns by men. 'The law has no power to order that a women shall have even occasional access to her children, though

she could prove that she was driven by violence from her husband's house and that he had deserted her for a mistress,' she wrote. 'The father's right is absolute and paramount, and can no more be affected by the mother's claim, than if she had no existence.'

Norton noted that 'bastard children' – whose parents were not married – were given to their mothers until the age of seven, but married men could forcibly seize their children, *'even should they be infants at the breast'* (the italics are hers). Because of that, a wife whose husband had cheated on her, beaten her, or otherwise made the marriage intolerable would still be reluctant to leave him. And even though being rejected by a woman might wound a man's pride, the law still made him both 'accuser and judge' in a divorce case. Such a man would be 'certainly angry, probably mortified, and in nine cases out of ten is *eager to avenge* his real or fancied injuries. To this angry man, to this mortified man, the law awards that which can rarely be entrusted to any human being, even in the calmest hours of life, namely, DESPOTIC POWER!'

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In the years following the trial, George tortured Caroline by offering access to the children, only to withdraw it again. She saw them infrequently, as he continually changed the terms of his demands. Eventually, though, Caroline's pamphlets – and her lobbying – had an effect. Parliament began to debate a new law inspired by the Norton case. It would allow mothers custody of their children up to the age of seven, and guarantee access to them after that. The bill faced strong opposition in the Lords, where it was seen as an attack on the tradition of marriage – and therefore, the entire social system built around it. Caroline was described in a newspaper as a 'renowned agitatrice', to which she replied that she believed 'the beauty and devotion of a woman's character mainly to depend on the consciousness of her inferiority to man'. To get her bill passed, Caroline needed to seem respectable and unthreatening.

In 1839, MPs passed the Custody of Infants Act, which Diane Atkinson calls 'the first piece of feminist legislation in Britain'. Women who had not been convicted of 'criminal conversation' – adultery – now had a legal right to see their children after a separation or divorce. (Provided, that is, they were wealthy enough to establish that right in a court case.) Unfortunately, the law applied only in England, Ireland and Wales, and Caroline Norton's sons were in Scotland.

The couple's game of cat and mouse continued. Caroline rented a holiday cottage on the Isle of Wight in 1840, and George promised to send the children to her. They did not come. She wrote to him, and he suggested that she meet the children in London instead. They did not come. She found out they had been sent to an English boarding school, and travelled there to see them. She was not allowed inside. Then, in September 1842, her youngest son scratched his arm falling from a horse in the grounds of his father's home at Kettlethorpe Hall and developed tetanus. By the time Caroline arrived, the nine-year-old was already in a coffin. His last words to his father had been: 'I am certainly dying. I shall soon be strangled, pray for me.'

The death seems to have sparked some remorse in George, because Caroline was allowed to spend Christmas with her two surviving boys, and saw them more over the following years. Fletcher had tuberculosis, and was sent to Lisbon. Brinsley went to Oxford to study. Once they were adults, George could not keep them from seeing her. Still, she carried on campaigning, and the law kept moving. In 1857, the Matrimonial Causes Act allowed divorce cases to be heard in the courts, instead of requiring an Act of Parliament. But the law still favoured men, who could divorce their wives for adultery alone; women required another 'offence' such as incest, cruelty or desertion. That double standard was not removed until the Matrimonial Causes Act of 1923.

Further reforms followed throughout the early and mid-twentieth century and there are now more than 100,000 divorces a

year in England and Wales, according to the Office for National Statistics. It isn't just people who have been divorced who owe Caroline Norton a debt; it's anyone who has ever had a wedding. Her campaign changed what marriage meant for women, moving it away from a purchase agreement and closer to a deal between equals.

Caroline Norton is a difficult hero for today's feminists. 'The natural position of woman is inferiority to man,' she once wrote. 'Amen! That is a thing of God's appointing, not of man's devising. I never pretended to the wild and ridiculous doctrine of equality.' She was, she said, her husband's inferior, 'the clouded moon to that sun'. Her arguments rested heavily on a traditional view of motherhood as self-sacrificing and sacrosanct, and on her class status. She wanted to be treated better than a housemaid, and better than the fallen women who had children outside marriage. Today, we would describe this as respectability politics – the belief that marginalised groups can protect themselves from discrimination by appearing 'respectable'. It is a dangerous tendency to indulge, because good behaviour tends to be defined by the group with power. Rights should be universal, not based on how sympathetic the people claiming them appear to the mainstream. Sorry, we would love to help you, runs the argument, but why must you be so difficult?

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The end of my marriage was nowhere near as fraught as Caroline Norton's, but it was still a humbling experience. Despite a multibillion-pound wedding industry, the mechanics of divorce are not mentioned in bridal magazines and the kind of Internet forums where women call themselves 'FutureMrsX'. That is not because divorce doesn't generate revenue – I could show you the Regency town houses it has bought for specialist lawyers – but because it's still seen as shameful. A divorce is a failure.

I certainly felt like a failure when I got divorced: like I had taken a hammer and smashed the glass holding a perfect photograph of

happiness. My parents were disappointed. Half a dozen friends never spoke to me again. I imagined that everyone could see that I had taken off my wedding ring, though I doubt a single person noticed. We had both taken each others' surnames, going double-barrelled, so I also had to change my byline. That felt like a public admission of a private shame.

When I got married again in 2015, there was no way I was going to take my new partner's surname. As far as any name can be yours, 'Helen Lewis' was mine. Yes, 'Lewis' is my father's name, passed down the male line, but it's also the one I've had since birth. It means *me*. And what other options do women have, anyway? The civil rights activist Malcolm X dropped his surname altogether, writing in his autobiography that 'for me, my "X" replaced the white slave-master name of "Little" which some blue-eyed devil named Little had imposed upon my paternal forebears'. But how many of us would contemplate something as radical as that? One couple I know mashed their surnames together to create a new one: that also solves the problem of what the children get called.*

The way that marriage has traditionally functioned as ownership is picked up brilliantly by Margaret Atwood in the naming conventions of *The Handmaid's Tale*: Offred, Ofwarren, Ofglen. These are patronymics, 'of' plus the name of a handmaid's commander. For Offred, her previous identity disappears along with her name when she is re-educated as a handmaid. She is now merely the property of Fred. But really, becoming 'Offred' is no different to becoming – as formal invitations still have it – 'Mrs John Smith'. In the late 1960s, the activist Sheila Michaels fought hard to reject Miss or Mrs in favour of 'a title for a woman who did not "belong" to a man'. She succeeded. Helped by the 1971 launch of *Ms* magazine, 'Ms' went from outlandish to commonplace in a generation.

The vision of Gilead presented in *The Handmaid's Tale* is

* Still, it's not a viable solution when Ms Hardman marries Mr Hancock.

shocking, but no more shocking than the fact that women with careers and bank accounts so readily yield up the most obvious marker of their identities. And that many find it romantic. 'We're a unit,' claimed one article I read. A unit of *him*. In countries which follow English naming conventions, taking your husband's surname erases your own family background, and your previous life, and nukes your Google results. It's also harder to trace women through parish records and historical documents than it is to trace men. Sometimes, all that's left of them is a stub: Mrs Smith, Mrs Tanner, Mrs Cartwright.

Traces of this erasure of women through marriage persist. Wedding registrars still ask for your father's profession for parish records, but not your mother's. Marriage certificates have a space for the names of the couple's fathers, but not their mothers. The children of single mothers and lesbians simply have to leave a blank. As did my husband and I: we declined to include one parent but not the other. The registrar looked pained, but accepted it.* Of course, all this doesn't *feel* shocking because it is widespread and widely accepted. But really, Mrs X is just a version of Offred. One of the hardest tasks of feminism is to expose how tradition gums up our vision, and makes us think that political choices are down to natural and immutable laws.

The idea of 'coverture' – of being a legal appendage to your husband, along with your children – sounds stoutly Victorian. But its effects persisted for a long time, and not just in marriage records. My mother, who was too busy cooking dinners and washing nappies in the 1970s to get her Greenham on, once told me how angry she was when she discovered her children couldn't go on her passport, only Dad's. Britain eventually solved this in 1998 by giving

* In 2018, the Registration of Marriage Bill had a first reading in the House of Commons. By making marriage registries digital, it would have allowed mothers to have their names recorded. Its further progress was halted by the dissolution of parliament for the 2019 general election.

children passports of their own, but even now, women with a different surname to their children are sometimes treated with suspicion at borders.

By the way, if you've changed your name and feel unfairly judged, let me say this: I don't think it makes you a bad person or insufficiently woke or whatever phrase we're using now. My feminist motto comes from Simone de Beauvoir: 'half victim, half accomplice, like everyone else'. If you hated your father, got fed up with people mis-spelling an 'ethnic' name, decided it was better for SEO purposes, or even just fancied an easy life, I completely understand. *Half accomplice, like everyone else.* Feminism should be less concerned with individual choices than the conditions in which they were made.

The history of divorce is the history of women's struggle to be treated as full citizens under the law. It is far from the only feminist fight with that aim: the vote, as we'll see, is an obvious example, but women have faced hundreds of other, smaller injustices too. Let's go have a drink in London in 1982. Mine's a white wine – oh, but I won't be able to get served at the bar. Because I'm a woman.

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'It's a place where barristers and lawyers and journalists gather and exchange legal gossip at the bar,' said Tess Gill, cradling a cup of tea. 'You don't exchange legal gossip if you're a meek little woman sitting in the back at a table.' She was talking about El Vino on Fleet Street in London. The bar is just down the road from the Royal Courts of Justice, and at the time was next to the headquarters of several newspapers. Until Gill came along, El Vino had a curious rule. It insisted that women could not get served at the bar. They had to sit at the back.

Feminists were convinced that the rule violated the Sex Discrimination Act, passed in 1975. An early challenge was dismissed by a county-court judge as *'de minimis'* – not important enough to

consider.* In 1982, Gill and the National Council for Civil Liberties decided to try again.

Throughout the twentieth century, it was common for pubs and working men's clubs to restrict where women could drink. 'When I used to go to Manchester,' Gill told me, 'the women would be sitting in the "offie", which was like a cubbyhole, which was outside; the men would be inside. The working men's clubs, sometimes they had ridiculous rules like there was lino round the bar, and the women could only stand on the carpet.' Gill had worked as a trade union official, and remembers threatening to phone the BBC when one bartender in Newcastle politely refused to serve her. He gave in.

Today it is the citadels of privilege which are most resistant to treating women as equals. Gentlemen's clubs like the Garrick and White's, student societies such as the Bullingdon Club and dining clubs such as Pratt's are exempted from the Equality Act, allowing their memberships to remain men-only.† Most Freemasonry lodges do not admit women (although trans women are allowed to stay members, post-transition). In 2019, Muirfield golf club finally invited twelve women to join after 275 years. Three years earlier, it had been deprived of hosting the Open championship because of its previous policy.

All these are meeting places for what you might call 'the establishment' – politicians, journalists, actors, judges – or at least, the bits of the establishment with dangly bits. My otherwise beloved Benedict Cumberbatch – who once wore a T-shirt proclaiming 'this is what a feminist looks like' – is regularly cited as a member of the men-only Garrick Club. Imagine being a senior female judge: you're already keenly aware of your minority status. Then you find out that

* He must have been unaware of what a totemic role challenging racial segregation at lunch counters played in the US civil rights movement.

† I hope it gives you as much joy as it does me that Iain Duncan Smith is a lifetime honorary member of Pratt's. Presumably he was blackballed by the Incompetent Twat dining club, his first choice.

your male peers are all hanging out somewhere that you're not allowed to go. Yes, there are a few women-only clubs and societies, but these have nothing like the history or exclusivity of their male equivalents. Trying to compare female-only swim sessions or the Women's Institute with the clout of the Freemasons would be funny if it wasn't such a regular tactic of sexists. In any case, abolishing the handful of women's clubs would be a price worth paying for changing the law.

Back in the 1980s, rules excluding women from particular spaces were much more common. Like the divorce laws, they codified their second-class status. That made them an obvious target for feminists. At the time, Tess Gill was active in London women's liberation groups, which usually met in someone's house because all the women had children. ('If someone didn't do what they were meant to do – we did keep minutes – at the next meeting, they had to make chocolate mousse as a penalty.') She and her friend, the journalist Anna Coote, worked out the best way to expose the absurdity of the El Vino rule and set up the grounds for a court case under sex discrimination legislation. They picked the morning, 11.30 a.m., so the landlord was unable to argue that they could not get served because the bar was busy. Two male witnesses went in first – 'we tried to get one of them to wear a kilt, but he refused' – and waited for the women to join them. They carried briefcases, which they put on the bar, because one of El Vino's arguments was that women would clutter up the space with their handbags. When Tess and Anna arrived, they greeted their friends, ordered their drinks, and were told to sit down. 'We said, no, we'd prefer to stand here, and I think they did begin to twig that something was going on.' Once the barman refused to serve them, they left. They had their evidence of sex discrimination.

Again, the county court ruled that the case was '*de minimis*'. The campaigners raised the money to take it to the Court of Appeal. The judges there had to confess that 'two of our brethren' drank in

El Vino, but the campaigners did not insist that they recused themselves. They won the case, and went down to the bar, trailed by cameras. They were *still* refused service on the grounds it would cause a breach of the peace, and went back to the Court of Appeal for an injunction which compelled the bar to give them a drink. 'At that stage, we said, "The last place we're going to have a drink is El Vino,"' Gill told me. The bar subsequently banned them for life, reckoning, in the words of one newspaper, that 'no one who cost £25,000 in lawyers' fees was a desirable customer'.

Gill faced a familiar kind of backlash: the issue was trivial. (Today, she would have been told that drinking in a bar was 'hardly FGM', or ordered to contemplate the plight of women in Saudi Arabia.) It wasn't just the county court who deemed the case too small to bother with; the press loudly proclaimed that it was a fuss about nothing, although that didn't stop *them* covering it extensively. Gill showed me the press clippings, which she has kept for more than three decades, spreading them out over her lap and the table in her cosy flat off Baker Street. I knew the words 'fairer sex' would appear, but there were also terrible puns: 'Wine, women and throng'. In the county court, a senior employment barrister tried to suggest that perhaps women didn't *want* to queue to get served. It's a well-worn, and deeply patronising, argument: women are better protected by men's kindness and chivalry than their own money and basic human rights. 'I'm sure you wouldn't want to be crammed in a bar,' the lawyer said to Gill. 'I do travel to work on the Tube every day,' came the reply.

Not all of the naysayers were men. One of the most vicious responses came from the 'First Lady of Fleet Street', opinion columnist Jean Rook. 'This week a hairy-voiced, bristling feminist rang me from a local London radio station asking me to celebrate at El Vino, the Fleet Street wine bar which, after banning women for forty years, has finally been cracked by court order,' she wrote in the *Daily Express*. 'All I can soberly say is that Women's Lib has reached the dregs when female journalists work themselves into a Bacchanalian

frenzy over a triumph not worth a bunch of sour grapes.' The puns, I'm afraid, don't stop there. Gill and her friends 'made a bloody Mary nuisance of themselves', causing Rook to 'blush wine-red' because Fleet Street's feminists 'have scraped the barrel by splashing round heady headlines on How I Made History'.

Most of the column is a valiant attempt to pretend that there is no larger principle at stake. Of course, a woman who has succeeded in the existing system has an incentive to prop it up. But in the final sentence of her argument, Rook gave herself away: 'You made fools of yourselves, too. Now why not just get on with the job I've never had any difficulty taking from a man?' In other words, *how can systemic discrimination exist, when I personally have succeeded?* But the plural of anecdote is not data. Jean Rook represents another type of difficult woman – the kind who argues that her own personal experience is more important than all the evidence to the contrary. Her article is also a reminder that feminism is not a shorthand for 'what women think', but a political movement dedicated to the equality of the sexes.

Whenever feminists are attacked for focusing on a 'trivial issue', there is usually a bigger principle at stake. Tess Gill's and Anna Coote's inability to get a drink was a symptom of a world in which women were consistently treated as second-class citizens under the law. In 1974, they co-wrote a book called *Women's Rights: A Practical Guide*. It is full of quietly jaw-dropping examples. Governments assumed that men were breadwinners and women were homemakers, and therefore it was natural for men to have financial and legal control over their partners. Married women did not fill out their own tax returns; their income was noted on their husband's form. Any rebate due went to him. As a married woman, 'you will find, in practice, that ... hire purchase companies and landlords still ask for your husband's signature'. The 'cohabitation rule' meant that a woman living with a man had several state benefits withdrawn, even if he was not financially supporting her. The contraception chapter

records that 'it is still the policy of most clinics to ask for your husband's consent if you are having a coil fitted or an operation for sterilisation. Their excuse is that the doctor must be protected from being sued by an irate husband who might demand compensation for loss of his ability to have children'. And, of course, 'your husband cannot normally be prosecuted for rape if he forces you to have sexual intercourse against your will . . . As far as the law is concerned, when you marry a man you consent to have sexual intercourse with him while you are married.'* Male immigrants could bring their wives into Britain as dependents, but female immigrants were only allowed to bring in husbands under 'exceptional circumstances'. There was, however, a special type of visa open only to women: a twelve-month stay was permitted for 'au pair girls' living with a family and doing domestic work. ('No mention of au pair boys,' note the authors.)

All of this overt discrimination happened within living memory. My mother's generation were often asked to find a responsible man to countersign their mortgage applications. In 1974, Gill's and Coote's book noted that 'building societies are getting rather more enlightened in their attitudes these days and few will admit to discriminating against women'. Which would have been legal, of course; this was the year before the Sex Discrimination Act. Three out of twenty-five institutions surveyed said they might require a 'guarantor' for a female loan applicant. One refused to lend to single women at all, citing 'quota restrictions'. It was also harder to get a mortgage with a low-income job – and, guess what, the majority of low-income jobs were held by women.

I wonder how many younger women know about this. The Second Wave of feminism in the late 1960s and 70s is often now derided as privileged and blinkered. But it swept away the legal framework which enshrined women's second-class status. Gill's and Coote's

* This was only changed through a court case in 1991, the year the Hubble telescope was launched and the first website went online. Madness.

handbook offers advice on dealing with immigration services and how to visit your partner in prison. Tess Gill worked with lesbians whose children were taken from them by the divorce courts. This was not a ladies' lunch club. If it looks like that in hindsight, it's because the work of thousands of women has been largely forgotten, and the fierce opposition to it has been forgotten too. As a feminist, victory is often bittersweet: the new reality quickly feels normal, obscuring the fight required to get there. Progress erases struggle.

All these Second Wave advances made the same point as the fight for divorce. Without independence – legal and economic – women were reliant on men giving them whatever they felt was appropriate. In marriage, women were left at the mercy of drunkards, gamblers and abusers. At work, they were grudgingly accepted, as long as they didn't make trouble or ask to be paid the same. At the pub, the story was the same. Women were not really people.

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In 2010, a group of judges ruled on a case known as 'Radmacher', involving prenuptial agreements. These are used by rich people to protect their assets if they get divorced. Many see them as unfair: it is usually the richer spouse (or their family) who employs the lawyers needed to draw one up. The poorer spouse might not be able to employ their own advisers, and might feel pressured to go along with whatever document is put in front of them.

In Radmacher, the homemaker and poorer spouse was a man, but in most similar cases it would be a woman. In the ruling, that fact led to the closest thing that senior judges get to a Paddington Bear-style 'hard stare'. The object of a prenup, one of the judges wrote, 'is to deny the economically weaker spouse the provision to which she – it is usually, although by no means invariably, she – would otherwise be entitled'. And then came the *coup de grâce*: 'In short, there is a gender dimension to the issue which some may think ill-suited to decision by a court consisting of eight men and one woman.'

The sharpness was justified. Today, more than 180 years after Caroline Norton's divorce trial was an all-male affair, our laws are still firmly in the hands of men. And a particular type of man, at that. More than seventy per cent of senior judges are privately educated, compared with seven per cent of the population of a whole. As of 1 April 2018, only 6.8 per cent of judges came from a black or minority ethnic background. Two-thirds of MPs, our lawmakers, are male. By April 2018, only 29 per cent of all court judges were female. The Supreme Court has three women and nine men.

The judge who wrote that opinion was the first female law lord. She came up through academia rather than the traditional judges' circuit. In September 2017, she became the first female president of the Supreme Court. Her name is Brenda Hale.

Reading Lady Hale's biography, two things stand out to me. First, she calls herself a feminist: her coat of arms bears the Latin inscription *Omnia Femina Aequissimae* (Women are Equal to Everything). Second, she has been divorced.

In person, Brenda Hale is quietly terrifying. I met her at the Supreme Court's headquarters on Parliament Square, where she has an office filled with porcelain frogs: an in-joke with her second husband, whom she has described as her 'frog prince'.

Her career is a reminder of the speed of change. She graduated in law in 1966, when divorce law was still built entirely around the idea of guilt and innocence. Difficult women were treated more harshly when marital assets were divided. The assumption, Lady Hale told me, was that a woman 'had to be innocent to get anything out of her husband, or if she was less than wholly innocent, what she needed to be provided with would be reduced by the extent to which she was less than wholly innocent'. Any wife painted as an unreasonable nag risked getting a lower settlement. I asked her if she would accept the characterisation of divorce law as a punishment, to make the couple involved feel like failures. 'No, I wouldn't put it that way,' she said. 'Marriage is meant to be a lifelong commitment, so

you could only divorce somebody if they had basically committed a fundamental breach of the marital contract, and you, as the innocent party, were therefore permitted to seek a dissolution against the guilty party. So there was certainly an innocent party and a guilty party.'

It wasn't until 1969 that separation – a neutral term – was added to the list of possible grounds for divorce, and the idea of 'matrimonial offences' was abolished. The trouble now, Lady Hale believes, is the legacy of the older system. It *looks* as if a divorce is based around fault, but in reality the system 'makes no attempt to allocate blame accurately, none at all. And that's what makes a lot of people feel that it's unjust.' A couple must decide between themselves that one of them will agree to be legally deemed 'unreasonable' or adulterous, even when both have slept with other people or both have contributed to the failure of the marriage.

Lady Hale's view is that there should be 'no-fault divorces' where the couple agree that the relationship has broken down. After a waiting period of six months to a year, they make a joint statement reaffirming that belief. No reasons have to be given, so there is no wrangling over who left whom, who slept with whom, or who treated whom worse. The divorce is then granted.

Doesn't that sound like the current grounds of separation? Well, no. There is no burden of proof attached to no-fault divorce. If you currently use 'separation' as the grounds, you have to demonstrate that you *have* separated, perhaps using mortgage letters and bank statements and other paperwork, and your partner can contest it. Flicking through my 1970s feminist handbooks, I was shocked to discover that one woman was refused a divorce because her husband was still living in the spare room and she was cooking his meals for him. Her kind attempt to resolve the breakdown of their relationship with minimum disruption to their children was used as a reason not to dissolve the marriage.

No-fault divorce is an idea whose time has come. Then again, it

has felt that way for nearly thirty years. In 1990, a Law Commission report strongly recommended reforming the grounds for divorce, calling them 'confusing and misleading'. Couples did not understand the artificial categories used, particularly if these had little to do with the actual reason for them breaking up. The lack of no-fault divorce was 'discriminatory' because separation – the only grounds which did not involve blame – was difficult for poor couples. Take a couple with a council-house tenancy, which cannot be reallocated until the divorce is finalised. How do you prove separation if neither of you can afford to move out? Couples were being asked to maintain 'separate households' under one roof, which was 'a most unnatural and artificial lifestyle'. In reality, 'a young mother with children living in a council house is obliged to rely upon fault whether or not she wants to do so and irrespective of the damage it may do'. The current law provoked 'unnecessary hostility and bitterness', just as it had done in Caroline Norton's time. It also did nothing to save marriages, and made life harder for children.

These recommendations were criticised, says Lady Hale, 'on the basis that it was an attack on marriage and you needed to maintain the fault basis of divorce because otherwise divorce would be too easy, or not moral'. However, she points out that divorce is currently 'easy' in legal terms if both parties agree on the grounds. It is fast, too, if one side will admit to adultery.*

*

When I got divorced, I was in my late twenties, with good friends, a loving family and a decent job. And yet it was still a profoundly lonely experience. I made the decision to leave in December, and then

* Civil partnerships and same-sex marriages cannot be dissolved on grounds of adultery. According to our law, the only kind of sex that's sexy enough to end a legal contract is good old penis-in-vagina. This is, as we'll see later, part of an outdated conception of what 'normal' sex is. But in the meantime it's great news for fans of cunnilingus and remaining married.

immediately faced the question: what about Christmas? Who ends their marriage just before Christmas – and how could I find somewhere else to live during the holiday season? So I stayed until January. But that brings its own horrors. When you know you're going to leave, it poisons all your interactions with your partner: you are lying to someone who loves you – and someone who part of you still loves.

Next, the practical considerations. I had virtually no savings – just enough to put down the deposit on a rented flat after sleeping in a friend's spare room for a couple of weeks. The same friends met me at my old place with a taxi to take my stuff away. All I wanted, I had said, were my clothes and books. I was the one who'd screwed this up, after all. In my first night in my new flat, I could see the platforms of Highbury station through the window. The flat hadn't come with curtains. I got undressed in the dark, hoping there wasn't a pervert with night-vision goggles lurking in the houses opposite. I kept thinking about all the other women who had done what I just did. How much harder it would be to leave with children. How much harder it would be to sneak away in the daytime from a violent, controlling partner. How much harder with only a joint bank account. How much harder without a bank account at all.

The Second Wave feminists fought hard for women's economic independence, and that battle is not over. Universal Credit – Iain Duncan Smith's flagship welfare reform, which rolls together six benefits into one – is a backwards step. It automatically goes to the 'head of the household', which contradicts decades of campaigning by feminists. In 1975, when child benefit was brought in – replacing family allowance – the Labour politician Barbara Castle ensured that it went to mothers. In the Commons, she called it 'a new universal, non-means tested, tax-free cash benefit for all children, including the first, payable to the mother'. There were arguments at the time that it would be 'simpler' to include it with the payslips of the family breadwinner. That would mean, in almost every family of the time,

the man. Castle rejected that idea, saying that the money would be a great relief to women whose 'shopping money' had run out by the middle of the week. The benefit belonged in the purse, not in the wallet. It would give women who didn't do paid work a little money to call their own.

We often talk now about the anguish of men who have seen manufacturing and other traditionally male jobs disappear. We should be honest, though, about where some of this anguish comes from: the loss of status and control that came from being head of the household and arbiter of its cashflow. It was easier to stop your wife being 'difficult' – scolding you, contradicting you, questioning your priorities – when you could cut off her income.

Barbara Castle lived in a world where a woman who stayed at home was a supplicant. If her partner was paid weekly, she might have to wait for him to give her the 'housekeeping' – money for bills and food – with the rest kept for him. Under this system, women had no expectation of any money to spend on themselves, while their partners perhaps retained a few pounds for the pub or the bookies. It was also harder to leave. When I wrote about Universal Credit, I was overwhelmed by stories about 'running-away money'. One man told me that when his mother died, the family found a stash of money hidden in a drawer. Thankfully, she had never needed it – but she was always aware that she might do. There is little mention of the phrase on the Internet. It's an artefact of an earlier age, in which a woman who worried that her partner's temper was worsening, or his drinking had begun to cloud their lives, or even simply that she no longer loved him, would find it hard to escape.

In January 2016, Paulette Perhach wrote in *Billfold* about her generation's version of running-away money. She described one road a young woman with a decent job might take: running up credit card bills, buying expensive lunchtime sandwiches, letting your nice boyfriend cover the rent while you get yourself together. And then: your boss gropes you, and your boyfriend overhears you talking to another

man, and grabs you hard enough to send you crashing into the coffee table.

> He seems so sorry, cries, even, so that night you lie down in the same bed. You stare up at the dark and try to calculate how long it would take you to save up the cash to move out. Telling yourself that he's sorry, convincing yourself it was an accident, discounting this one time because he didn't hit you, exactly, seems much more feasible than finding the money, with what you owe every month. The next time you go out as a couple, his arm around your shoulders, you look at all the other girlfriends and imagine finger-sized bruises under their long sleeves.

Perhach wanted young women to have a different story. If they wore cheap clothes, worked extra shifts and lived within their means, they could build up savings. That would mean they could quit the job with the groping boss, and dump the possessive, violent boyfriend. She called the money a 'fuck-off fund'.

Her essay went viral, and alongside the positive reactions came a welter of complaints. How do you build up a fuck-off fund when your job is insecure, when even cheap clothes mean you have to resort to a credit card, and – in America – when a simple chest infection or broken finger can land you with a huge medical bill? The criticism wasn't wrong. Not everyone can build up a fuck-off fund (although if you can, you should). The state has a role to play, too.

That idea now seems faintly radical even in Britain – never mind hypercapitalist America. The British feminists of the Second Wave grew up in a much more collectivist society, with the foundation of the NHS and the welfare state still fresh in the public memory. They probably assumed that legal changes would continue, and society could be pushed to restructure itself further. But there is always a backlash. Both here and in the US, we have seen the demonisation of

'welfare queens' and 'benefits scroungers', with single mothers portrayed as parasites leeching off the taxpayer. There is widespread opposition to state benefits on the right of politics, and not just because of their cost to the Treasury. There is also an ideological point about supporting lifestyles (such as single parenthood) that social conservatives dislike. Today, some politicians use welfare policy to punish women who are 'difficult'. That is, women who don't 'make the marriage work', who want more from a relationship than the bare minimum of a roof above their head, or who dare to fall in love with someone else.

*

The right to divorce might seem like a strange place to start our story.* But feminism is ultimately about independence: control of our bodies, and control of our lives. In the 1800s, the law treated women like children, to be looked after by men. That arrangement persists today in Saudi Arabia, where the 'guardianship' system means women have to seek permission from their father, husband or nearest male relative to apply for a passport, travel abroad or study. The 'reforming' government there graciously granted women the ability to vote in 2015 and drive in 2018, but has since imprisoned activists for challenging the guardianship system. Saudi Arabia also demonstrates how legal and financial control is used to enforce other restrictions on women's lives, such as 'modest' clothing standards.

In nineteenth-century Britain, the series of feminist legal reforms which began with the Custody of Infants Act and the Married Women's Property Act allowed women to become increasingly independent – and increasingly 'difficult'. By the turn of the twentieth century, women like Caroline Norton could no longer be held

* You'll have to forgive me, in this chapter, for focusing on heterosexual relationships. With gay marriage only introduced in Britain in 2013, the US and Ireland in 2015, and Australia in 2017, there is little research on same-sex divorce.

hostage by their partners, and treated like possessions rather than people. They could dream of building up the nineteenth century equivalent of a fuck-off fund. They were harder to blackmail into submission. They were beginning to be free. It all came too late for Norton herself, though. She won her adultery case, but not her independence. In the end, what legally separated her from the unbearable George was his death in 1877. She too was dead within three months.

Divorce is now legal in every country in the world, except the Philippines.* But these reforms are often very recent, uncomfortably fragile and limited in scope. Ireland did not vote to legalise divorce until 24 November 1995, and even then the referendum was won by just 50.28 per cent of the vote. Clearly, women as well as men feared change to the status quo.

Our divorce law still needs to be reformed. The presumption that mothers are the primary carers is being gradually eroded, which will inevitably affect 'access' to children after divorces. A less adversarial system, which favours dialogue over assigning blame, would benefit parents and their children. The old argument that making divorce less needlessly unpleasant would encourage the break-up of families is obsolete. Divorce rates have been falling for years. In April 2019, justice secretary David Gauke announced that he would bring forward proposals for 'no-fault divorce'. There was barely a squeak of backlash. 'While we will always uphold the institution of marriage, it cannot be right that our outdated law creates or increases conflict between divorcing couples,' said the Conservative MP.

For centuries, marriage was used to control women – to suppress their difficulty, to stop them being unruly and independent. Divorce laws have traditionally done the same. They have encouraged us to put women's behaviour on trial, in the knowledge that

* The only legal way to end a marriage in the majority Catholic country is annulment. Muslims can obtain a religious divorce but not a civil one.

they will always be judged more harshly for their imperfections than men. They have made leaving a relationship carry a heavy social and economic cost – one which falls harder on women.

Feminists fought to ensure that the institution of marriage could no longer be used to control women, and to ensure that divorces did not leave us destitute. The law no longer installs men as our protectors, deforming their love into a form of ownership. I am glad I got divorced, and I no longer feel ashamed that my marriage ended. Instead, I feel gratitude to the women who fought so that they – and I – could be free to make our own choices.

And once women gained a little more control over their lives and their money, they were better placed to fight the other laws and practices which made them second-class citizens. Our next story takes us to Manchester in 1905, where two young women are tired of asking nicely. They want the vote, and they mean to get it – even if that means using violence.

2. THE VOTE